111-612

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~311.~~ 64

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

HELEN PITKIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 7, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 311.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the western division of the western district of *of* Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court, before you, at the October term, 1879, thereof, between Helen Pitkin, plaintiff, and the Connecticut Mutual Life Insurance Company, defendant, a manifest error hath happened, to the great damage of the said Connecticut Mutual Life Insurance Company, defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2nd day of January, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of Kansas, with the seal of the circuit court of the United States for the western division of the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri,
By WARREN WATSON, *D. C.*

Allowed by

A. KREKEL, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Kansas, this 28th day of August, A. D. 1880.

[SEAL.] H. C. GEISBERG, *Clerk,*
By WARREN WATSON,
Deputy Clerk.

(Indorsed:) No. 67. United States circuit court, western district of Missouri. Helen Pitkin vs. Conn. Mut. Life Ins. Co. Writ of error to

the circuit court of the U. S. for west. div. of west. dist. of Missouri. Returned and filed day of , 187 . , clerk.

3 The United States of America to Helen Pitkin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the western district of Missouri, wherein the Connecticut Mutual Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the United States for said western district of Missouri, this day of January, in the year of our Lord one thousand eight hundred and eighty.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the within citation, this 30th day of January, A. D. 1880.

GARDINER LATHROP,
One of the Attorneys for Defendant in Error.
WALLACE PRATT & F. M. BLACK,
Att'ys for Defendant in Error.

(Indorsed:) United States circuit court, western district of Missouri. Helen Pitkin vs. Conn. Mut. Life Ins. Co. Citation. Filed January 30, 1880. H. C. Geisberg, clerk.

5 *Caption.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

Be it remembered that heretofore, to wit, on the 7th day of May, A. D. 1879, in vacation of the circuit court of the United States for said division and district, the following proceedings were had and entered of record in the case of Helen Pitkin, plaintiff, against the Connecticut Mutual Life Insurance Company, defendant, to wit:

Transcript filed.

HELEN PITKIN
against } 67.
CONNECTICUT MUTUAL LIFE INSURANCE CO.

This day there is filed in the clerk's office a transcript of record in the above cause as certified from the circuit court of Jackson County, Missouri.

Which said transcript is in words and figures following, to wit:

COPY OF TRANSCRIPT.

STATE OF MISSOURI,
County of Jackson, ss:

Be it remembered that heretofore, to wit, on the 26th day of March, A. D. 1879; there was filed in the office of the clerk of the circuit court of Jackson County, Missouri, at Kansas City, a petition, wherein Helen Pitkin is plaintiff and Connecticut Mutual Life Insurance Company
6 is defendant, and which said petition is in words and figures following, to wit:

Petition.

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, DEFENDANT.

In the circuit court of Jackson County, State of Missouri, April term, 1879.

The plaintiff states:

I. That on the first (1st) day of August, A. D. 1866, at Hartford, in the State of Connecticut, in consideration of the sum of one hundred and sixty ($160.00) dollars in hand paid by the plaintiff to the defendant, and of the annual premium of one hundred and sixty ($160.00) dollars to be paid on or before the first (1st) day of August in every year thereafter, the defendant made and delivered to plaintiff, in the name of Helen Pitkin, meaning the plaintiff, its policy of insurance upon the life of Geo. E. Pitkin, which is hereto annexed as a part of this petition and marked "Exhibit A," and thereby insured the life of said George E. Pitkin, for the sole use of the said plaintiff, in the amount of five thousand ($5,000.00) dollars for the term of the whole continuance of his life.

And the said defendant promised and agreed to and with the said plaintiff well and truly to pay or cause to be paid, at the city of Hartford, in the State of Connecticut, the said sum insured to the plaintiff, her ex-
7 ecutors, administrators, or assigns, within ninety (90) days after due notice and proof of the death of the said George E. Pitkin, deducting therefrom all notes taken for premiums unpaid at that date. Plaintiff states that there were no notes unpaid at that date.

II. That the plaintiff was then and continued ever after to be the wife of said George E. Pitkin during the course of his life, and as such had a valuable interest in the life of said George E. Pitkin.

III. That on the 29th day of September, A. D. 1878, at Kansas City, in the State of Missouri, said George E. Pitkin died.

IV. That the said George E. Pitkin and the plaintiff each duly fulfilled all the conditions of said insurance on their part; and that the plaintiff more than (90) ninety days before the commencement of this action, to wit, on the 10th day of October, A. D. 1878, at Hartford aforesaid, gave to the defendant due notice and proof of the death of the said George E. Pitkin and duly demanded payment of the said sum of five thousand ($5,000) dollars.

V. That no part of the same has been paid, and the said sum is now due thereon from the defendant to the plaintiff.

Therefore plaintiff prays judgment for five thousand ($5,000.00) dollars, with interest, &c.

And the plaintiff further states:

I. That afterwards, to wit, on the 24th day of September, A. D.
8 1873, at Hartford aforesaid, in consideration of the representations and declarations made in the application for this insurance, and of the payment by the plaintiff to the defendant of the sum of two hundred and fifty-one dollars and sixteen cents ($251.16), the receipt of which is duly acknowledged, the defendant made and delivered to the plaintiff its endowment policy of insurance upon the life of said George E. Pitkin, which is hereto annexed and marked "Exhibit B," and thereby insured the life of said George E. Pitkin, for the sole use and benefit of the said plaintiff, in the amount of four hundred and twenty-three ($423.00) dollars, for the term of eight (8) years; and the said defendant promised and agreed to and with the said plaintiff to pay the said sum insured, at its office in Hartford, Conn., to the plaintiff or her legal representatives, within ninety (90) days after due notice and satisfactory evidence of the death of the said George E. Pitkin, during the continuance of the said policy.

II. That the plaintiff was then and continued to be down to the death of the said George E. Pitkin his wife, and as such had a valuable interest in the life of said George E. Pitkin.

III. That on the 29th day of September, A. D. 1878, at Kansas City, State of Missouri, said George E. Pitkin died.

IV. That the said George E. Pitkin and the plaintiff each duly fulfilled all the conditions of said insurance on their part; and
9 that more than ninety (90) days before the commencement of this action, to wit, on the 10th day of October, A. D. 1878, at Hartford aforesaid, the said plaintiff gave to the defendant due notice and proof of the death of said George E. Pitkin, and duly demanded payment of the said sum of four hundred and twenty-three ($423.00) dollars.

V. That no part of the same has been paid, and the said sum is now due thereon from the defendant to the plaintiff.

Therefore plaintiff prays judgment for four hundred and twenty-three ($423.00) dollars, with interest and the costs of this suit.

HELEN PITKIN,
By GARDINER LATHROP AND
W. D. CARLILE, *Her Attorneys.*

And which said Exhibit A is in the words and figures following, to wit

EXH. A.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

No. 39513. This policy of insurance witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the sum of one hundred and sixty dollars and cents to them in hand paid by Helen Pitkin, wife of George E. Pitkin, of Kansas, City, Mo., and of the

Annual premium, $160.00.

annual premium of one hundred and sixty dollars and cents to be paid on or before the first day of August in every year during the continuance of this policy, do assure the life of George E. Pitkin, of Kansas City, in the county of Jackson, State of Missouri, for the sole use of Helen Pitkin, in the amount of five thousand dollars, for the term of the whole continuance of his life.

Term of life

And the said company do hereby provide and agree to and with the said assured, her executors, administrators, and assigns, well and truly to pay or cause to be paid, at the city of Hartford, the said sum insured, to the said insured, her executors, administrators, or assigns, for her sole use, within ninety days after due notice and proof of the death of the said George E. Pitkin, deducting therefrom all notes taken for premiums unpaid at that date; and in case of the death of the said Helen Pitkin before the decease of the said George E. Pitkin the amount of said insurance shall be payable after her death to her children, for their use, or to their guardian if under age, ninety days after notice and proof of the death of the said George E. Pitkin as aforesaid.

Sum insured, $5,000.00.

And it is hereby conditioned and agreed that if at any time after three premiums had been paid on this policy it shall be surrendered while yet in force, the company will issue a paid-up non-forfeiture policy thereon for such an amount as the then present value of this policy would purchase as a single premium.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said George E. Pitkin shall die upon
11 the seas, or shall, without the consent of this company previously obtained and endorsed upon this policy, pass either by sea or land beyond the settled limits of the United States (excepting by land or on lakes and rivers into the settled limits of the British provinces of the two Canadas, Nova Scotia, or New Brunswick), or visit those parts of the United States which lie south of the thirty-sixth degree of north latitude between the first day of June and the first day of November; or shall, without such previous consent thus endorsed, visit California or Oregon, or pass into the Territories of the United States lying west of the 21st meridian of longitude from Washington; or shall, without such previous consent thus endorsed, enter into any military or naval service whatever (the militia not in actual service excepted); or shall, without such previous consent thus endorsed, be personally employed as an engineer or fireman in charge of a steam-engine, or as fireman or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder; or in case he shall become so far intemperate as to impair his health or induce delirium tremens, or shall die by his own hand, or in a duel or in consequence thereof, or by the hands of justice, or in the known violation of any law of the State or the United States, or of any government where he may be, this policy shall be void and of no effect.

12 And it is also understood and agreed to be the true intent and meaning thereof that if the proposals, answers, and declaration made by the said Helen Pitkin and bearing date the twentieth day of July, 1866, and which are hereby made part and parcel of this policy as fully as if herein recited, and upon the faith of which this agreement is made,

shall be found in any respect untrue, then and in such case this policy shall be null and void; and in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured or any part thereof, and this policy shall cease and determine.

And it is further understood and agreed that the policy shall not take effect and become binding on said company until the premium above named shall be actually paid to said company or to some person authorized by them to receive it.

And it is further agreed that in every case where this policy shall cease or become or be null or void, all previous payments made thereon and all dividend credits accruing therefrom shall be forfeited to the said company.

In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delive'd this
13 contract, in the city of Hartford, this first day of August, one thousand eight hundred and sixty-six; but the same shall not be binding until countersigned by E. W. Pierce, agent at Kansas City, Mo.

GUY R. PHELPS, *President.*
W. S. OLMSTED, *Secretary.*

Countersigned at Kansas City, Mo., this 10th day of August, 1866.
E. W. PIERCE, *Agent.*

The annual premium required to continue this policy in force must be paid on or before the day of the date of the same or the insurance ceases and the policy is void. The only evidence of payment of such premium which will be acknowledge by the company as valid and binding is a certificate of renewal, signed by the secretary of the company. Certificates for this purpose will be furnished (for delivery to policy-holders) to those agents of the company who are authorized to collect premiums on account of the company; but as such authority is liable to frequent changes, and subject to be revoked without the knowledge of the insured, and as persons not so authorized may solicit payment of premium, representing that their receipt or endorsement will renew the policy, the policy-holders are cautioned not to pay renewal premiums to any person except upon delivery of a renewal certificate, issued from the office of the company and signed by the company.

This caution is important to policy-holders to prevent payments being made to irresponsible persons, or those not authorized by the com-
14 pany to receive them, thereby not only losing the money paid but forfeiting the insurance also.

For the convenience of policy-holders these renewal certificates will be furnished to the agents through whom the policy was issued, or at the location where it was last renewed, to be delivered upon the payment of the premium, unless otherwise directed by the insured; but the possession of the renewal certificate is the only evidence to the policy-holder of the authority of the agent to receive the premium.

Acceptance of the premium due on this policy by the company or its agents after the day upon which it is due must be considered as acts of grace or courtesy, and in no wise to be construed as forming a precedent for future payments, or a waiver of the forfeiture of the policy accord' to

the condition therein expressed if any future payment of premium be omitted on the day it falls due.

Agents of the company are in no case authorized to make, alter, or discharge contracts or waive forfeitures.

Proofs of death required.

1st. A certificate from the physician who attended the party during his last sickness, stating particularly the nature of the decease, its duration, and the time of death.

2nd. A certificate of a disinterested acquaintance certifying to the time and fact of his death, and that he or she was the person insured by that name in this company.

15 3rd. A certificate from the undertaker, sexton, or clergyman who officiated at the funeral of the deceased and saw the body interred.

4th. A certificate from some intimate friend of the deceased of the age of the party at the time of his death.

These several certificates should be sworn to before a magistrate or other officer qualified to administer an oath or affirmation.

(Endorsements on back of policy :) Exhibit A. No. 59513. The Connecticut Mutual Life Insurance Company of Hartford, Conn. Assurance on the life of George E. Pitkin. Amount, $5,000.00. Date, August 1, 1866. Term of life. Annual premium, $160.00; extra do., . When due, 1st August. Cash part of payment, $80.00; policy, $1.00; amount of note, $80.00—$161.00. Filed March 26th, '79. Wallace Laws, clerk, by F. D. Clark, D. C.

And which said Exhibit B is in the words and figures following, to wit:

EXH. B.

No. 124976.] [$423.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

Age, 47.] [Premium, $251.16.

16 This policy of insurance witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the representations and declarations made to them in the application for this insurance, and of the sum of two hundred and fifty-one dollars and sixteen cents, receipt whereof is hereby acknowledged, do hereby insure the life of George E. Pitman (the insured), of Kansas , county of Jackson and State of Missouri, for the term of eight years from and after the date thereof, in the sum of four hundred and twenty-three dollars, for the sole use and benefit of Helen Pitkin (the assured), wife of the said insured; the said sum to be paid at the office of this company in Hartford, Conn., to the said assured or her legal representatives, within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of this policy; or if the said assured be not then living the said sum insured shall be payable as above to her children, or their guardian

if under age; or if the said insured shall survive said term of eight years from and after the date thereof, the sum above insured shall then be paid, at the office of this company in Hartford, Conn., to the wife aforesaid.

This policy is issued and accepted upon the following express
17 conditions and agreements:

1st. That the answers, statements, representations, and declarations contained in or indorsed upon the application of this insurance, which application is hereby referred to and made a part of this contract, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation, or concealment, then this policy shall be absolutely null and void; and, further, that no answer, statement, representation, or declaration made to any agent, solicitor, or any person whatever, and not contained in said application, shall be taken or considered as having been made or brought to the notice or knowledge of this company; and this company shall be held and considered as having no notice or knowledge of such answer, statement, representation, or declaration; and the said application shall be taken and held to be and to contain the only answers, statements, representations, or declarations made to this company in behalf of this insurance.

2nd. That the said insured is, under this policy, freely permitted to reside in any civilized abode in the Western Hemisphere lying north of the thirty-second parallel of north latitude, in the United States lying south of the said thirty-second parallel (excepting from the first day of July to the first day of November), and in the Eastern Hemisphere
18 lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich; and he may also pass as a passenger by usual routes and means of public conveyance to and from any part or place within the foregoing limits; but if he shall, at any time during the continuance of this policy, pass beyond or without the foregoing limits, or shall be personally engaged in blasting, mining, or submarine operations, or in the manufacture or transportation of highly inflammable or explosive substances, or as an employee in any capacity upon service on any sea, sound, inlet, river, lake, or railroad, or if he shall enter into any military or naval service whatsoever, whether voluntarily or otherwise (the militia when not in actual service alone excepted), without the consent of this company previously given in writing in each or either of the foregoing cases, or if he shall die by suicide or in consequence of his violation of any law, or if he shall become so far intemperate as to impair his health or induce delirium tremens, or if he shall be convicted of felony, then in each and every of the foregoing cases this policy shall become null and void.

3rd. That in every case in which this policy shall cease and determine or shall become null and void all premiums paid in respect of the same shall be forfeited to this company.

19 4th. That this policy shall not be assigned, but the same may be surrendered to this company and discharged at any time by the assured, if living, and, after her death, by the beneficiary hereof under the statutes of Connecticut.

In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this con-

tract, in the city of Hartford, this 24th day of September, A. D. one thousand eight hundred and seventy-three.

T. PRESTON, *V. President.*
JACOB L. GREENE, *Secretary.*

Agents of the company have no authority to make, alter, or exchange any condition of the policy nor to waive forfeitures thereof.
Ex'd, J. H. J.

Statute of Connecticut respecting policies of insurance for the benefit of married women.

SECTION 36. A policy of insurance on the life of any person, expressed to be for the benefit of any married woman, or duly assigned, transferred, or made payable to any married woman, or to any person in trust for her benefit, whether the same be procured by herself, her husband, or any other person, shall insure to her seperate use and benefit or case of her decease before payment of the same to the use and benefit of her children or of her husband's children, as may be provided in said policy, independently of her husband, his creditors or representatives: Provided, that if the annual premium on any such policy exceed three hundred dollars, an amount
20 equal to the excess of such premium over three hundred dollars, with interest thereon, shall inure to the benefit of such creditors: And provided further, that in case of the decease of such married woman before the decease of the life insured, leaving no children of herself or of her husband, the policy shall become the property of the person who has paid the premiums upon the same, unless otherwise provided by said policy.

(Endorsement on back:) Exhibit B. No. #124976. Endowment insurance. Paid up. The Connecticut Mutual Life Insurance Company. Sum insured, $423. On the life of George E. Pitkin. Filed March 26th, '79. Wallace Laws, clerk, by F. D. Clark, d. c. Abst. 26.

And on the same day the clerk of said court issued a writ of summons, directed to the sheriff of the city of St. Louis, as follows, to wit:

Writ of summons.

Circuit court. Summons.

The State of Missouri to the sheriff of the city of St. Louis, greeting:

You are hereby commanded to summon the Connecticut Mutual Life Insurance Company, if it be found in your county, that it be and
21 appear before the honorable judge of our circuit court of Jackson County, at the court-house in the city of Kansas, on the 2nd Monday in April, it being the 14th day of said month, then and there to answer unto the complaint of Helen Pitkin as set forth in the foregoing petition; and that you then and there have this writ, and that you certify how you execute the same.

Witness Wallace Laws, clerk of the said circuit court, with the seal

thereof hereunto affixed, at office in Kansas City, this 26th day of March, A. D. 1879.

[SEAL CIRCUIT COURT.] WALLACE LAWS, *Clerk*,
By F. P. CLARK, *D. C.*

Which said writ was afterwards duly returned, with the sheriff's return endorsed thereon in words and figures as follows, to wit:

Return to writ.

Executed this writ, in the city of St. Louis, on the 27th day of March, 1879, by delivering a copy of the writ and petition as furnished by the clerk to A. B. Denton, the person authorized by the written instrument or power of attorney of the Connecticut Mutual Life Insurance Company, the defendant named within, duly signed and sealed and filed with the superintendant of the insurance department of Missouri, to receive service of process for and in behalf of said company in this State.

JOHN FENN,
Sheriff of the City of St. Louis,
By B. F. DAILE, *Deputy.*

Fees, $1.00; paid.

22 9th day, April term, 1879. April 24th, A. D. 1879.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 4268.

Motion to quash return filed.

Now at this day comes defendant, by attorney, and files motion to quash return of service to writ of summons.

10th day, April term, A. D. 1879. April 25th, A. D. 1879.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 4268.

Motion to quash overruled.

Now at this day come parties, by attorney, and defendant's motion to quash return of service to writ of summons is submitted, by consent of parties, and, after being fully heard, is by the court overruled.

Petition & bond for removal filed.

To which ruling of court defendant excepts, and files its petition and bond for removal of the same into the United States circuit court for the western district of Missouri, conditioned according to law.

Order of removal.

And upon consideration the court grants the prayer of said petition, approves said bond, and orders that this cause be removed into the circuit court of the United States for the western district of Missouri, western division.

23 Which said petition for removal is in words and figures following, to wit:

In the circuit court of Jackson County, State of Missouri.

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, defendant.
} Copy of petition for removal.

Petition for removal to the circuit court of the United States for the western district of Missouri.

To the said circuit court:

Your petitioner, the above named defendant, respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that your petitioner was at the time of the commencement of this suit and still is a citizen of the State of Connecticut, and that Helen Pitkin, the above-named plaintiff, was then and still is a citizen of the State of Missouri.

Your petitioner further states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, between said plaintiff and said defendant.

And your petitioner offers herewith a bond, with good and sufficient surety, for his entering in said circuit court of the United States
24 for the western district of Missouri on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto; and prays this court to proceed no farther herein except to make the order of removal required by law, and to accept said surety and said bond, and to cause the record herein to be removed into said circuit court of the United States in and for said western district of Missouri; and will ever pray.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By LEE AND CHANDLER, *Its Attorneys.*

And which said bond for removal is as follows, to wit:

Copy of bond for removal.

Know all men by these presents that the Connecticut Mutual Life Insurance Company, a corporation of Hartford, Connecticut, as principal, and Bradley D. Lee, as surety, are held and firmly bound unto Helen Pitkin,

of Kansas City, Missouri, in the penal sum of two hundred and fifty dollars, the payment whereof well and truly to be made unto the said Helen Pitkin, her heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Connecticut Mutual Life Insurance Company having petitioned the circuit court of Jackson County,
25 State of Missouri, for the removal of a certain cause therein pending wherein said Connecticut Mutual Life Insurance Company is defendant and said Helen Pitkin is plaintiff, to the circuit court of the United States for the western district of Missouri:

Now, if the Connecticut Mutual Life Insurance Company, the petitioner therein, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise in full force and virtue.

Witness our hands and seals this 25th day of April, 1879, the said Connecticut Mutual Life Insurance Company signing by and through Bradley D. Lee, its attorney, thereto duly authorized.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By BRADLEY D. LEE, *Its Attorney.* [SEAL.]
BRADLEY D. LEE. [SEAL.]

STATE OF MISSOURI,
County of Jackson, ss:

I, Wallace Laws, clerk of the circuit court of Jackson County, at Kansas City, do certify that the foregoing is a true and perfect transcript of the record and proceedings in a certain case lately pending in said
26 circuit court wherein Helen Pitkin is plaintiff against Connecticut Mutual Life Insurance Company, defendant, as the same now appears of record and on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said circuit court, at office in Kansas City, this 3rd day of May, A. D. 1879.

[SEAL OF CIRCUIT COURT.] WALLACE LAWS, *Clerk*,
By F. P. CLARK, *D. C.*

And afterwards, to wit, in vacation, on the 17th day of May, 1879, the following, among other, proceedings were had, to wit:

Answer filed.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INS. COMPANY.

This day comes the defendant, by its attorneys, Messrs. Chase and Brown, and files answer herein.

Said answer is in words and figures following, to wit:

Copy of answer.

In the circuit court of the United States for the western district of Missouri.

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, DEFENDANT.
} Action at law.

And now at this day comes the defendant herein and for its answer to the first count or cause of action in plaintiff's petition admits that
27 it executed the policy of insurance mentioned in said count.

That George E. Pitkin died on or about the 29th day of September, A. D. 1878, and that proof of said death was made to this defendant.

And, further answering herein, this defendant alleges that said policy of insurance, by the terms thereof, expressly recites and provides that in case the said George E. Pitkin shall, after the execution of said policy, become so far intemperate as to impair his health or induce delerium tremens, or in case he shall die by his own hand, then said policy shall be void and of no effect.

And this defendant alleges as breaches of said contract or policy of insurance as follows, to wit:

That said George E. Pitkin, after the execution and delivery of said policy of insurance, became so far intemperate as to impair his health.

That said George E. Pitkin, after the execution and delivery of said policy of insurance, became so far intemperate as to induce delerium tremens.

That said George E. Pitkin, after the execution and delivery of said policy of insurance, did die by his own hand; that, with premeditation and deliberation, on or about the 29th day of September, 1878, he, the said George E. Pitkin, shot himself through his head with a bullet discharged by him from a pistol then and there in his hand, by reason whereof he died.

And for another and further defense herein this defendant alleges that prior to the execution and delivery of said policy by defendant, and
28 for the purpose of procuring said policy of insurance, and as an inducement to defendant to issue the same, plaintiff made application therefor, in which she made certain statements and representations to defendant which were false and untrue, as follows, to wit: That in said application the following question was propounded to plaintiff, to wit: "Is the party now and has he always been of temperate habits?" (The word party meaning and referring to said George E. Pitkin.) To which question plaintiff made answer as follows, to wit: "Yes;" which answer to said question was false and untrue. That in said application plaintiff contracted and agreed with defendant that the answers given by plaintiff to the questions therein propounded to her should be the basis and form a part of said contract or policy of insurance, and that if the same were not in all respects true and correctly stated, then said policy should be void, and that all moneys which should be paid thereon, and all dividends and credits which should accrue thereon, should be forfeited to said company.

And defendant further alleges that by the terms of said policy of insurance it is provided that if the said proposals, answers, and declarations made by plaintiff shall be found in any respect untrue, then said policy shall be null and void, and that by the terms of said policy said answers and declarations of plaintiff are made a part and parcel of said policy of insurance. Wherefore, by reason of the defenses above set forth,
29 defendant says that said policy of insurance is void, and that plaintiff ought not to recover thereon; and defendant prays that it may be hence discharged.

For answer to the second count or cause of action in plaintiff's petition it admits that it executed the policy of insurance mentioned in said count; that George E. Pitkin died on or about the 29th day of September, 1878, and that proof of said death was made to this defendant.

And, further answering herein, this defendant alleges that said policy of insurance, by the terms thereof, expressly recites and provides that in case the said George E. Pitkin shall, after the execution of said policy, become so far intemperate as to impair his health or induce delirium tremens, or in case he shall die by suicide, then said policy shall be void and of no effect.

And this defendant alleges as breaches of said contract or policy of insurance as follows, to wit: That said George E. Pitkin, after the execution and delivery of said policy of insurance, became so far intemperate as to impair his health.

That said George E. Pitkin, after the execution and delivery of said policy of insurance, became so far intemperate as to induce delirium tremens.

That said George E. Pitkin, after the execution and delivery of
30 said policy of insurance, did die by suicide; that, with premeditation and deliberation, on or about the 29th day of September, 1878, he, the said George E. Pitkin, shot himself through his head with a bullet discharged by him from a pistol then and there in his hand, by reason whereof he died.

And for another and further defense herein this defendant alleges that prior to the execution and delivery of said policy by defendant, and for the purpose of procuring said policy of insurance, and as an inducement to defendant to issue the same, plaintiff made application therefor, in which she made certain statements and representations to defendant which were false and untrue, as follows, to wit: That in said application the following question was propounded to plaintiff, to wit: "Is the party now, and has he always been, of temperate habits?" (The word party meaning and referring to said George E. Pitkin.) To which question plaintiff made answer as follows, to wit, "Yes;" which answer to said question was false and untrue. That in said application plaintiff contracted and agreed with de that the answers given by plaintiff to the questions herein propounded to her should be the basis and form a part of said contract or policy of insurance, and that if the same were not in all
31 respects true and correctly stated, then said policy should be void, and that all moneys which should be paid thereon and all dividends and credits which should accrue thereon should be forfeited to said company. And defendant further alleges that by the terms of said policy of insurance it is provided that if the said proposals, answers, and dec-

larations made by plaintiff shall be found in any respect untrue, then said policy shall be null and void, and that by the terms of said policy said answers and declarations of plaintiff are made a part and parcel of said policy of insurance.

Wherefore, by reason of the defenses above set forth, defendant says that said policy of insurance is void, and that plaintiff ought not to recover thereon; and defendant prays that it may be hence discharged.

LEE AND CHANDLER, AND
CHASE AND BROWN,
Att'ys for Def't.

And afterwards, to wit, at a regular term of said court begun and held at Kansas City on the third Monday in May, A. D. 1879, and on the 20th day of May, A. D. 1879, the following further proceedings were had and entered of record, to wit:

Reply filed.

HELEN PITKIN
vs.
THE CONNECTICUT MUTUAL LIFE INS. CO.

This day comes the plaintiff, by her attorneys, Messrs. Gardiner Lathrop and W. D. Carlile, and files reply to the answer herein.
32 Said reply is in words and figures following, to wit:

Copy of reply.

In the circuit court of the United States for the western district of Missouri, western division.

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, DEFENDANT.

And now at this day comes the plaintiff, and for her reply to the defendant's answer, and each and every defence thereof, denies each and every material allegation in said answer contained, except as herein expressly admitted.

Plaintiff, for further reply, says that it is true that on the 29th day of September, A. D. 1878, George E. Pitkin, the person named in the petition, shot himself through his head with a bullet discharged by him from a pistol then and there in his hand, by reason whereof he died; but plaintiff says that at the time he committed said act of self-destruction, and with reference thereto, he, the said George E. Pitkin, was insane, was not in possession of his mental faculties, and was not responsible for said act.

Wherefore plaintiff prays judgment as in the petition.

LATHROP & SMITH, AND
W. D. CARLISLE,
Attorneys for Plaintiff.

And afterwards, to wit, at a regular term of said court begun and held at Kansas City on the third Monday in October, A. D. 1879, and on the 27th day of October, A. D. 1879, the following proceedings were
33 had and entered of record, to wit:

Motion to dismiss filed.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

This day comes the defendant, by its attorneys, C. W. Chase and Lee and Chandler, and files motion herein to dismiss this cause.

Said motion is in words and figures following, to wit:

Copy of motion to dismiss.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now at this day comes the defendant herein and moves the court to dismiss this cause, for the reason that the court wherein the suit was instituted, and from which the cause, was transmitted to this court, had no jurisdiction of the defendant in this action nor of the subject-matter of this action.

Because the order of removal of this case by the State court was and is void for want of jurisdiction of the State court to make it.

Because no jurisdiction is in this court to hear and try this action.

Because the only residence of the defendant in this State is in the city of St. Louis, in this State; and because the plaintiff is a resident of Jackson County.

LEE & CHANDLER, &
C. W. CHASE,
Att'ys for Def't.

34 *Transcript from State court filed.*

On the 28th day of October, A. D. 1879, the following transcript was filed in the clerk's office, which is in words and figures as follows, to wit:

Copy of transcript.

In the circuit court within and for the county of Jackson, State of Missouri, at Kansas City.

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, defendant.

The motion to quash return of service to the writ of summons referred to in the transcript prepared in the above-entitled cause, and filed in the

circuit court of the United States for the western division of the western district of Missouri, is in the words and figures as follows, to wit:

Copy of motion to dismiss.

In the circuit court of Jackson County, Missouri, April term, 1879.

HELEN PITKIN, PL'FF,
vs.
CONNECTICUT MUT. LIFE INS. COMPANY, DEF'T.

And now comes the above-named defendant, and, appearing herein for the purpose of this motion only, moves the court to quash the return of service to the writ of summons in this case made by the sheriff of the city of St. Louis, Missouri, herein, for the following reasons, to wit;

1st. Because it does not appear that service of said writ was made upon this defendant at any place within the jurisdiction of this court.

2nd. Because it does not appear that the sheriff of the city of
35 St. Louis, Missouri, had any legal right or authority under the law to serve said writ of summons.

3rd. Because the return of service herein shows that the officer who served said writ of summons herein had no legal right or authority to execute said writ.

4th. Because under the law this defendant is not bound to answer the command of said writ.

5th. Because said writ so executed by said officer is null and void.

6th. Because there has been no legal service of process upon this defendant herein as is shown by said return.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By LEE & CHANDLER, *Attorneys.*

Cert. of Clerk.

STATE OF MISSOURI,
County of Jackson:

I, Wallace Laws, clerk of the circuit court within and for the county and State aforesaid, hereby certify that the foregoing is a full, true, and complete transcript of "the motion to quash return of service to writ of summons" in the case of Helen Pitkin vs. Connecticut Mutual Life Insurance Company, lately pending in said circuit court, as the same remains on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at office, this 27th day of October, A. D. 1879.

[CIRCUIT COURT SEAL.] WALLACE LAWS, *Clerk.*

36 And on the 28th day of October, A. D. 1879, the following further proceeding were entered of record, to wit:

Motion to dismiss overruled.

HELEN PITKIN
vs.
CONN. MUT. L. INS. CO.

This day come the parties, by their attorneys, the plaintiff by Lathrop and Smith, Pratt, Brumback & Ferry, F. M. Black, and W. D. Carlile, and the defendant by Jefferson Chandler and C. W. Chase, and the motion to dismiss being submitted to the court, it is ordered that the same be not granted.

Case called for trial.—Hearing.

And this cause being regularly called for trial, it is ordered that a jury come, to wit, Peter Teel, O. J. Ralph, John Shiller, John Kirkpatrick, G. Mayne, John Gray, E. P. Gould, W. D. Copeland, Robert Standley, Harrison Commodore, Eli Downs, George A. Patrick, twelve good and lawful men, who were duly sworn to try this cause; and the hour of adjournment having arrived, it is ordered that further proceedings be postponed until to-morrow morning.

And afterwards, on the 29th day of October, A. D. 1879, the following proceedings were entered of record, to wit:

HELEN PITKIN
vs.
CONN. MUT. LIFE INS. CO.

This day come the parties, by their attorneys, and the jury sworn to try this cause; thereupon further proceeding are had; and the hearing not being concluded at the hour of adjournment, it is ordered that fur-
37 ther proceedings be postponed until to-morrow morning.

And on the 31st day of October, 1879, the following further proceedings were entered of record, to wit:

Return of verdict.

HELEN PITKIN
against
CONN. MUT. LIFE INS. CO.

This day again come the parties, by their attorneys, and the jury sworn to try this cause; and thereupon this cause is submitted to the jury; and after due consultation the jury return into court the following verdict, to wit:

Copy of verdict.

We, the jury, find the issues for the plaintiff, and assesses the damages: Policy, $5,000.00; interest, $244.16; policy, $423; interest, $20.61; whole amount, $5,687.77.

JNO. SHILLER, *Foreman.*

Motion in arrest and for new trial filed.

Thereupon comes the defendant and files motion in arrest and for a new trial.

Copy of motion in arrest.

Said motion is in words and figures as follows, to wit:

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now at this time comes the defendant and moves the court to set aside the verdict and grant a new trial, for the following reasons, to wit:

1. Because the verdict is against the evidence and weight of evidence.

Because the issue of insanity raised in the pleadings is not established by the testimony, and there is no testing thereof.

38 Because the court erred in changing the pay and in failing to give instructions asked by defendant to be given.

Because the court erred in admitting incompetent testimony for plaintiff, against objection of defendant, and excluded competent testimony offered by defendant.

Because court erred in refusing to sustain defendant's motion to dismiss.

Because the court has no jurisdiction of the defendant or of this action.

LEE & CHANDLER, AND
CHASE & BROWN,
Attorneys for Plaintiffs.

And on the 7th day of November, 1879, the following further proceedings were had and entered of record, to wit:

Motion in arrest, etc., overruled.

HELEN PITKIN
against
CONN. MUTUAL LIFE INS. CO.

The motion for a new trial having been heretofore submitted to the court and taken under advisement, now, the court being fully advised concerning the premises, it is ordered that said motion be overruled.

Judgment.

In consideration of the verdict heretofore rendered in this cause, the court doth adjudge that the plaintiff, Helen Pitkin, recover against the defendant, the Connecticut Mutual Life Insurance Company, the sum of five thousand six hundred and eighty-seven dollars and seventy-seven cents ($5,687.77), with her costs, and have thereof execution.

Exception of defendant.

Thereupon comes defendant and excepts to the ruling of the court herein, and by consent takes sixty days to file bill of exceptions.

And opposite said judgment, on the margin of the record, is the following, to wit:

Assignment of judgment.

This judgment assigned to K. Coates, trustee, by deed of date the day of Dec., 1879, recorded in book B, = 38, page 331, recorder's office, Jackson County, Missouri.

H. C. GEISBERG, *Clerk.*

And afterwards, to wit, during vacation, on the 2nd day of January, A. D. 1880, the following proceeding was had and entered of record, to wit:

Bond for appeal approved.

HELEN PITKIN
against
CONN. MUT. LIFE INS. CO.

A bond for appeal in the above case having been presented to the honorable Arnold Krekel, judge, at chambers, in Jefferson City, it is ordered that the same be approved.

Writ of error and citation issued.

And thereupon a writ of error and citation are signed and issued herein.

Said bond is in words and figures as follows, to wit:

Copy of bond.

Know all men by these presents that we, Connecticut Mutual Life Insurance Co., principal, and Robert B. Wade and Chas. P. Budd, are held and firmly bound unto Helen Pitkin in the full and just sum of twelve thousand dollars, to be paid to the said Helen Pitkin, her heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fifth day of November, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at the October term, 1879, of the circuit court of the United States for the western division of the western district of Missouri, in a suit depending in said court between Helen Pitkin, plaintiff, and Connecticut Mutual Life Insurance Company, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Helen Pitkin citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday in October next:

Now the condition of the above obligation is such that if the said Connecticut Mutual Life Insurance Company shall prosecute said writ to ef-

fect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

THE CONNECTICUT MUTUAL LIFE INSURANCE CO., [SEAL.]
Per BUDD AND WADE, *Agents.* [SEAL.]
ROBERT B. WADE. [SEAL.]
C. P. BUDD. [SEAL.]

Approved by

A. KREKEL, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

41 *Affidavits of sureties.*

Personally appears Charles P. Budd and Robert B. Wade, who, being severally sworn on their oaths, say, and each of them says, that he is worth the sum of thirteen thousand dollars over and above all legal exemptions, and they and each of them says that he is a resident of the city of St. Louis, Missouri.

ROBERT B. WADE.
C. P. BUDD.

Sworn and subscribed before me this 6th day of November, 1879, for himself and C. P. Budd.

M. M. PRICE, *Clerk,*
By A. P. SELBIN, *Deputy.*

And afterwards, to wit, on the 30th day of March, A. D. 1880, the same being an adjourned day of the regular October term, A. D. 1879, of said court, the following appears of record in said cause, to wit:

Bill of exceptions signed and filed.

HELEN PITKIN
against
CONN. MUT. LIFE INS. CO.

This day comes defendant and presents to the court a bill of exceptions in the above cause, and thereupon the same is signed by the judge and ordered filed and made a part of the record herein.

And said bill of exceptions is in words and figures following, to wit:

Copy of bill of exceptions.

In the circuit court of the United States for the western division of the western district of Missouri, November term, 1879.

42 HELEN PITKIN, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company, defendant.

Be it remembered that the above-entitled cause came on for hearing on

the following pleadings set forth in the transcript certified from the State court.

Said transcript is in words and figures as follows, to wit:

TRANSCRIPT.

STATE OF MISSOURI,
County of Jackson, ss:

Be it remembered that heretofore, to wit, on the 26th day of March, A. D. 1879, there was filed in the office of the clerk of the circuit court of Jackson County, Missouri, at Kansas City, a petition wherein Helen Pitkin is plaintiff and Connecticut Mutual Life Insurance Company is defendant, and which said petition is in words and figures following, to wit:

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, defendant.

In the circuit court of Jackson County, State of Missouri, April term, 1879.

The plaintiff states:

I. That on the first (1st) day of August, A. D. 1866, at Hartford, in the State of Connecticut, in consideration of the sum of one hun-
43 dred and sixty ($160.00) dollars in hand paid by the plaintiff to the defendant, and of the annual premium of one hundred and sixty ($160.00) dollars to be paid on or before the first (1st) day of August in every year thereafter, the defendant made and delivered to the plaintiff, in the name of Helen Pitkin, meaning the plaintiff, its policy of insurance upon the life of George E. Pitkin, which is hereto annexed as a part of this petition and marked "Exhibit A," and thereby insured the life of said George E. Pitkin, for the sole use of the said plaintiff, in the amount of five thousand ($5,000.00) dollars, for the term of the whole continuance of his life.

And the said defendant promised and agreed to and with the said plaintiff well and truly to pay or cause to be paid, at the city of Hartford, in the State of Connecticut, the said sum insured, to the plaintiff, her executors, administrators, or assigns, within ninety (90) days after due notice and proof of the death of said George E. Pitkin, deducting therefrom all notes taken for premiums unpaid at that date. Plaintiff states that there were no notes unpaid at that date.

II. That the plaintiff was then and continued ever after to be the wife of said George E. Pitkin during the course of his life, and as such had a valuable interest in the life of said George E. Pitkin.

III. That on the 29th day of September, A. D. 1878, at Kansas City, in the State of Missouri, said George E. Pitkin died.

44 IV. That the said George E. Pitkin and the plaintiff each duly fulfilled all the conditions of said insurance on their part, and that the plaintiff, more than ninety (90) days before the commencement of this action, to wit, on the 10th day of October, A. D. 1878, at Hartford aforesaid, gave to the defendant due notice and proof of the death of the

said George E. Pitkin, and duly demanded payment of the said sum of five thousand ($5,000) dollars.

V. That no part of the same has been paid, and the said sum is now due thereon from the defendant to the plaintiff.

Therefore plaintiff prays judgment for five thousand ($5,000.00) dollars, with interest, &c.

And the plaintiff further states:

I. That afterwards, to wit, on the 24th day of September, A. D. 1873, at Hartford aforesaid, in consideration of the representations and declarations made in the application for this insurance, and of the payment by the plaintiff to the defendant of the sum of two hundred and fifty-one dollars and sixteen cents ($251.16), the receipt of which is duly acknowledged, the defendant made and delivered to the plaintiff its endowment policy of insurance upon the life of said George E. Pitkin, which is hereto annexed and marked "Exhibit B," and thereby insured the life of said George E.
Pitkin, for the sole use and benefit of the said plaintiff, in the amount
45 of four hundred and twenty-three ($423.00) dollars, for the term of eight (8) years; and the said defendant promised and agreed to and with the said plaintiff to pay the said sum insured, at its office in Hartford, Conn., to the plaintiff or her legal representatives, within ninety (90) days after due notice and satisfactory evidence of the death of the said George E. Pitkin, during the continuance of the said policy.

II. That the plaintiff was then and continued to be down to the death of the said George E. Pitkin his wife, and as such had a valuable interest in the life of said George E. Pitkin.

III. That on the 29th day of September, A. D. 1878, at Kansas City, State of Missouri, said George E. Pitkin died.

IV. That the said George E. Pitkin and the plaintiff each duly fulfilled all the conditions of said insurance on their part, and that more than ninety (90) days before the commencement of this action, to wit, on the 10th day of October, A. D. 1878, at Hartford aforesaid, the said plaintiff gave to the defendant due notice and proof of the death of said George E. Pitkin and duly demanded payment of the said sum of four hundred and twenty-three ($423.00) dollars.

V. That no part of the same has been paid, and the said sum is now due thereon from the defendant to the plaintiff.

Therefore plaintiff prays judgment for four hundred and twenty-three ($423.00) dollars, with interest and the costs of this suit.

HELEN PITKIN,
46 By GARDINER LATHROP AND
W. D. CARLILE,
Her Attorneys.

And which said Exhibit A is in the words and figures following, to wit:

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

No. 59513. This policy of insurance witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the sum of one hundred and sixty dollars and cents to them in hand paid by

Annual premium, $160.00.

Helen Pitkin, wife of George E. Pitkin, of Kansas City, Mo., and of the annual premium of one hundred and sixty dollars and ... cents to be paid on or before the first day of August in every year during the continuance of this policy, do assure the life of George E. Pitkin, of Kansas City, in the county of Jackson, State of Missouri, for the sole use of Helen Pitkin, in the amount of five thousand dollars, for the term of the whole continuance of his life.

Term of life.

And the said company do hereby promise and agree to and with the said assured, her executors, administrators, and assigns, well and truly to pay or cause to be paid, at the city of Hartford, the said sum insured, to the said insured, her executors, administrators, or assigns, for her sole use, within ninety days after due notice and proof of the death of the said George E. Pitkin, deducting therefrom all notes taken for premiums unpaid at that date; and in case of the death of the said Helen Pitkin before the decease of the said George E. Pitkin the
47 amount of said insurance shall be payable after her death to her children, for their use, or to their guardian if under age, ninety days after notice and proof of the death of the said George E. Pitkin as aforesaid.

Sum insured $5,000.00.

And it is hereby conditioned and agreed that if at any time after three premiums have been paid on this policy it shall be surrendered, while yet in force, the company will issue a paid up non-forfeiture policy thereon for such an amount as the then present value of this policy would purchase as a single premium.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said George E. Pitkin shall die upon the seas; or shall, without the consent of this company previously obtained and endorsed upon this policy, pass either by sea or land beyond the settled limits of the United States (excepting by land or on lakes and rivers into the settled limits of the British provinces of the two Canadas, Nova Scotia, or New Brunswick), or visit those parts of the United States which lie south of the thirty-sixth degree of north latitude between the first day of June and the first day of November; or shall, without such previous consent thus endorsed, visit California or Oregon, or pass into the territories of the United States lying west of the 21st meridian of longitude from Washington; or shall, without such previous consent thus en-
48 dorsed, enter into any military or naval service whatever (the militia not in actual service excepted); or shall, without such previous consent thus endorsed, be personally employed as an engineer or fireman in charge of a steam-engine, or as fireman or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder; or in case he shall become so far intemperate as to impair his health or induce delerium tremens, or shall die by his own hand, or in a duel or in consequence thereof, or by the hands of justice, or in the known violation of any law of the State or the United States or of any government where he may be, this policy shall be void and of no effect.

And it is also understood and agreed to be the true intent and meaning hereof that if the proposals, answers, and declarations made by the said Helen Pitkin, and bearing date the twentieth day of July, 1866, and which

are hereby made part and parcel of this policy as fully as if herein recited, and upon the faith of which this agreement is made, shall be found in any respect untrue, then and in such case this policy shall be null and void; or in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured or any part thereof, and this policy
49 shall cease and determine.

And it is further understood and agreed that this policy shall not take effect and become binding on said company until the premium named shall be actually paid to said company or to some person authorized by them to receive it.

And it is further agreed that in every case where this policy shall cease or become or be null or void, all previous payments made thereon and all dividend credits accruing therefrom shall be forfeited to the said company.

In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this first day August, one thousand eight hundred and sixty-six: but the same shall not be binding until countersigned by E. W. Pierce, agent at Kansas City, Mo.

GUY R. PHELPS, *President.*

M. S. OLMSTEAD, *Secretary.*

Countersigned at Kansas City, Mo., this 10 day of August, 1866.

E. W. PIERCE, *Agent.*

The annual premium required to continue this policy in force must be paid on or before the day of the date of the same, or the insurance ceases and the policy is void. The only evidence of payment of such premium which will be acknowledged by the company as valid and
50 binding is a certificate of renewal, signed by the secretary of the company. Certificates for this purpose will be furnished (for delivery to policy-holders) to those agents of the company who are authorized to collect premiums on account of the company; but as such authority is liable to frequent changes and subject to be revoked without the knowledge of the insured, and as persons not so authorized may solicit payment of premium, representing that their receipt or endorsement will renew the policy, the policy-holders are cautioned not to pay renewal premiums to any person except upon delivery of a renewal certificate issued from the office of the company and signed by the company.

This caution is important to policy-holders to prevent payments being made to irresponsible persons, or those not authorized by the company to receive them, thereby not only losing the money paid but forfeiting the insurance also.

For the convenience of policy-holders these renewal certificates will be furnished to the agents through whom the policy was issued, or at the location where it was last renewed, to be delivered upon the payment of the premium, unless otherwise directed by the insured; but the possession of the renewal certificate is the only evidence to the policy-holder of the authority of the agent to receive the premium.

51 Acceptance of the premium due on this policy by the company or its agents after the day upon which it was due must be con-

sidered as acts of grace or courtesy, and in no wise to be construed as forming a precedent for future payments, or a waiver of the forfeiture of the policy according to the conditions therein expressed if any future payment of premium be omitted on the day it falls due.

Agents of the company are in no case authorized to make, alter, or discharge contracts or waiver forfeitures.

Proofs of death required.

1st. A certificate from the physician who attended the party during his last sickness, stating particularly the nature of the decease, its duration, and the time of death.

2nd. A certificate of a disinterested acquaintance certifying to the time and fact of his death, and that he or she was the person insured by that name in this company.

3rd. A certificate from the undertaker, sexton, or clergyman who officiated at the funeral of the deceased and saw the body interred.

4th. A certificate from some intimate friend of the deceased of the age of the party at the time of his death.

These several certificates should be sworn to before a magistrate or other officer qualified to administer an oath or affirmation.

(Endorsement on back of policy:) Exhibit A. No. 59513. The
52 Connecticut Mutual Life Insurance Company of Hartford, Conn. Assurance on the life of George E. Pitkin. Amount, $5,000.00. Date, August 1, 1866. Term of life. Annual premium, $160.00; extra do., . When due, 1st August. Cash part of payment, $80.00; policy, 1.00; amount of note, $80.00=$161.00. Filed March 26th, '79. Wallace Laws, clerk, by F. B. Clark, D. C.

And which said Exhibit B is in the words and figures following, to wit:

No. 124976.] [$423.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

Age, 47.] [Premiums, $251.16.

This policy of insurance witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the representations and declarations made to them in the application for this insurance, and of the sum of two hundred and fifty one dollars and sixteen cents, receipt whereof is hereby acknowledged, do hereby insure the life of George E. Pitkin (the insured), of Kansas , county of Jackson, and State of Mis-
53 souri, for the term of eight years from and after the date thereof, in the sum of four hundred and twenty-three dollars, for the sole use and benefit of Helen Pitkin (the assured), wife of the said insured, the said sum to be paid, at the office of this company in Hartford, Conn., to the said assured or her legal representatives, within ninety days after due notice and satisfactory evidence of the death of the said insured, during the continuance of this policy; or if the said assured be not then living, the said sum insured shall be payable as above to her children, or

their guardian if under age; or if the said insured shall survive said term of eight years from and after the date hereof, the sum above insured shall then be paid, at the office of this company in Hartford, Conn., to the wife aforesaid.

This policy is issued and accepted upon the following express conditions and agreements:

1st. That the answers, statements, representations, and declarations contained in or indorsed upon the application of this insurance, which application is hereby referred to and made a part of this contract, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation, or concealment, then this policy shall be absolutely null and void; and, further, that no
54 answer, statement, representation, or declaration made to any agent, solicitor, or any person whatever, and not contained in said application, shall be taken or considered as having been made or brought to the notice or knowledge of this company; and this company shall be held and considered as having no notice or knowledge of such answer, statement, representation, or declaration; and the said application shall be taken and held to be and to contain the only answers, statements, representations, or declarations made to this company in behalf of this insurance.

2nd. That the said insured is under this policy freely permitted to reside in any civilized abode in the Western Hemisphere lying north of the thirty-second parallel of north latitude, in the United States lying south of the said thirty-second parallel (excepting from the first day of July to the first day of November), and in the Eastern Hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich; and he may also pass as a passenger by usual routes and means of public conveyance to and from any part or place within the foregoing limits; but if he shall at any time during the continuance of this policy pass beyond or without the foregoing limits, shall be personally engaged in blasting, mining; or submarine operations, or in the manufacture or transportation of highly inflammable or
55 explosive substances, or as an employee in any capacity upon service on any sea, sound, inlet, river, lake, or railroad, or if he shall enter into any military or naval service whatsoever, whether voluntarily or otherwise (the militia when not in actual service alone excepted), without the consent of this company previously given in writing in each or either of the foregoing cases, or if he shall die by suicide or in consequence of his violation of any law, or if he shall become so far intemperate as to impair his health or induce delerium tremens, or if he shall be convicted of felony, then in each and every of the foregoing cases this policy shall become null and void.

3rd. That in every case in which the policy shall cease and determine or shall become null and void all premiums paid in respect of the same shall be forfeited to this company.

4th. That this policy shall not be assigned, but the same may be surrendered to this company and discharged at any time by the assured, if living, and, after her death, by the beneficiary hereof, under the statutes of Connecticut.

In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this con-

tract, in the city of Hartford, this 24th day of September, A. D. one thousand eight hundred and seventy-three.

T. PRESTON, V. *President.*

JACOB L. GREEN, *Secretary.*

56 Agents of the company have no authority to make, alter, or change any condition of the policy nor to waive forfeitures thereof.
Ex'd, J. H. J.

Statute of Connecticut respecting policies of insurance for the benefit of married women.

SECTION 36. A policy of insurance on the life of any person, expressed to be for the benefit of any married woman, or duly assigned, transferred, or made payable to any married woman, or to any person in trust for her benefit, whether the same be procured by herself, her husband, or any other person, shall inure to her seperate use and benefit; or case of her decease before payment of the same, to the use and benefit of her children, or of her husband's children, as may be provided in said policy, independently of her husband, his creditors or representatives: Provided, that if the annual premium on any such policy exceed three hundred dollars, an amount equal to the excess of such premium over three hundred dollars, with interest thereon, shall inure to the benefit of such creditors: And provided further, that in case of the decease of such married woman before the decease of the life insured, leaving no children of herself or of her husband, the policy shall become the property of the person who has paid the premiums upon the same, unless otherwise provided by said policy.

(Endorsement on back:) Exhibit B. No. = 124976. Endowment insurance. Paid up. The Connecticut Mutual Life Insurance Company. Sum insured, $423. On the life of George E. Pitkin. Filed March 26th,
57 '79. Wallace Laws, clerk, by F. P. Clark, D. C. Abst. 26.

And on the same day the clerk of said court issued a writ of summons, directed to the sheriff of the city of St. Louis, as follows, to wit:

Circuit court summons.

The State of Missouri to the sheriff of the city of St. Louis, greeting:

You are hereby commanded to summon the Connecticut Mutual Life Insurance Company, if it be found in your county, that it be and appear before the honorable judge of our circuit court of Jackson County, at the court-house in the city of Kansas, on the 2nd Monday in April, it being the 14th day of said month, then and there to answer unto the complaint of Helen Pitkin as set forth in the foregoing petition; and that you then and there have this writ, and that you certify how you execute the same.

Witness Wallace Laws, clerk of the said circuit court, with the seal thereof hereunto affixed, at office in Kansas City, this 26th day of March, A. D. 1879.

[SEAL CIRCUIT COURT.] WALLACE LAWS, *Clerk*,
By F. P. CLARK, *D. C.*

Which said writ was afterwards duly returned, with the sheriff's return endorsed thereon in words and figures as follows, to wit:

Executed this writ in the city of St. Louis, on the 27th day of
58 March, 1879, by delivering a copy of the writ and petition as furnished by the clerk to A. B. Denton, the person authorized by the written instrument or power of attorney of the Connecticut Mutual Life Insurance Company, the defendant named within, duly signed and sealed and filed with the superintendant of the insurance department of Missouri, to receive service of process for and in behalf of said company in this State.

Fees, $1.00; paid.

JOHN FENN,
Sheriff of the City of St. Louis,
By B. F. DAILE,
Deputy.

9th day, April term, 1879. April 24th, A. D. 1879.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMpany. } 4268.

Now at this date comes defendant, by attorney, and files motion to quash return of service to writ of summons.

10th day, April term, A. D. 1879. April 25th, A. D. 1879.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMpany. } 4268.

Now at this date come parties, by attorney, and defendant's motion to quash return of service to writ of summons is submitted, by consent of parties, and after being fully heard is by the court overruled, to which ruling of court defendant excepts and files its petition and bond for removal of the same into the United States circuit court for the
59 western district of Missouri, conditioned according to law; and upon consideration the court grants the prayer of said petition, approves said bond, and orders that this cause be removed into the circuit court of the United States for the western district of Missouri, western division.

Which said petition for removal is in the words and figures following, to wit:

In the circuit court of Jackson County, State of Missouri.

HELEN PITKIN, PLAINTIFF,
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMpany, defendant. }

Petition for removal to the circuit court of the United States for the western district of Missouri:

To the said circuit court:

Your petitioner, the above-named defendant, respectfully shows to this

honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of different States, and that your petitioner was at the time of the commencement of this suit, and still is, a citizen of the State of Connecticut, and that Helen Pitkin, the above-named plaintiff, was then, and still is, a citizen of the State of Missouri.

60 Your petitioner further states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, between said plaintiff and said defendant.

And your petitioner offers herewith a bond with good and sufficient surety, for his entering in said circuit court of the United States for the western district of Missouri on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto; and prays this court to proceed no farther herein except to make order of removal required by law and to accept said surety and said bond, and to cause the record herein to be removed into said circuit court of the United States in and for said western district of Missouri and will ever pray.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By LEE AND CHANDLER, *Its Attornies.*

And which said bond for removal is as follows, to wit:

Know all men by these presents that the Connecticut Mutual Life Insurance Company, a corporation, of Hartford, Connecticut, as principal, and Bradley D. Lee, as surety, are held and firmly bound unto Helen Pitkin, of Kansas City, Missouri; in the penal sum of two hundred and

61 fifty dollars, the payment whereof well and truly to be made unto the said Helen Pitkin, her heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Connecticut Mutual Life Insurance Company having petitioned the circuit court of Jackson County, State of Missouri, for the removal of a certain cause therein pending, wherein said Connecticut Mutual Life Insurance Company is defendant and said Helen Pitkin is plaintiff, to the circuit court of the United States for the western district of Missouri:

Now, if the Connecticut Mutual Life Insurance Company the petitioner therein, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise in full force and virtue.

Witness our hands and seals the 25th day of April, 1879, the said Connecticut Mutual Life Insurance Company signing by and through Bradley D. Lee, its attorney, thereto duly authorized.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.
By BRADLEY D. LEE, *Its Attorney.* [SEAL.]
BRADLEY D. LEE. [SEAL.]

62 STATE OF MISSOURI,
County of Jackson, ss:

I, Wallace Laws, clerk of the circuit court of Jackson County, at Kansas City, do certify that the foregoing is a true and perfect transcript of the record and proceedings in a certain case lately pending in said circuit court, wherein Helen Pitkin is plaintiff against Connecticut Mutual Life Insurance Company, defendant, as the same now appears of record and on file in my office.

In witness whereof I hereunto set my hand and affix the seal of said circuit court, at office, in Kansas City, this 3rd day of May, A. D. 1879.

[SEAL CIRCUIT COURT.] WALLACE LAWS, *Clerk*,
By F. P. CLARK, *D. C.*

Be it remembered also that on the day of , 1879, before the commencement of the trial, the defendant filed the following motion to dismiss said cause, which said motion was in words and figures as follows, to wit:

Copy of motion to dismiss.

HELEN PITKIN
vs.
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

Now at this day comes the defendant herein and moves the court to dismiss this cause, for the reason that the court wherein the suit was instituted, and from which the cause was transmitted to this court, had no jurisdiction of the defendant in this action nor of the subject-matter of this action.

63 Because the order of removal of this case by the State court was and is void for want of jurisdiction of the State court to make it.

Because no jurisdiction is in this court to hear and try this action.

Because the only residence of the defendant in this State is in the city of St. Louis, in this State, and because the plaintiff is a resident of Jackson County.

LEE & CHANDLER AND
C. W. CHASE,
Att'ty's for Def't.

Which motion, being considered by the court, was overruled; to which ruling of the court in overruling said motion the defendant at time excepted.

Be it further remembered that on the 29th day of October, A. D. 1879, the above-entitled cause came on for hearing before the court and jury, when the following proceedings were had:

Plaintiff's counsel, to sustain the issue on their part, offered evidence as follows:

1st. The two policies of insurance sued on, numbered respectively, 59513 and 124976, and marked respectively, "Exhibit A" and "Exhibit B" to to the petition.

EXH. A.—*Copy of policy.*

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, OF HARTFORD, CONN.

No. 30513. This policy of insurance witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the sum of one hundred and sixty dollars and cents to them in hand paid by Helen Pitkin, wife of George E. Pitkin, of Kansas City, Mo.,
64 and of the annual premium of one hundred and sixty dollars and cents, to be paid on or before the first day of August in every year
Annual premium, $160.00. during the continuance of this policy, do assure the life of George E. Pitkin, of Kansas City, in the county of Jackson, State of Missouri, for the sole use of the said Helen Pitkin, in the amount of five thousand dollars, for the term of the whole continuance of his life.

Term of life. And the said company do hereby promise and agree to and with the said assured, her executors, administrators, and assigns, well and truly to pay, or cause to be paid, at the city of Hartford, the said sum insured to the said assured, her executors, administrators, or assigns, for her sole use, within ninety days after due notice and proof of the death of the said George E. Pitkin, deducting therefrom all notes taken for premiums unpaid at that date. And in case of the death of the said Helen Pitkin before the decease of the said George E. Pitkin, the amount
Sum insured, $5,000.00. of said insurance shall be payable after her death to her children for their use, or to their guardian if under age, ninety days after notice and proof of the death of the said George E. Pitkin as aforesaid.

And it is hereby conditioned and agreed that if at any time after three premiums have been paid on this policy it shall be surrendered while yet in force, the company will issue a paid-up non-forfeiture policy therefor for such an amount as the then present value of this policy would purchase as a single premium.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured
65 upon these express conditions, that in case the said George E. Pitkin shall die upon the seas, or shall, without the consent of this company previously obtained and endorsed upon this policy, pass either by sea or land beyond the settled limits of the United States (excepting by land or on lakes and rivers into the settled limits of the British provinces of the two Canadas, Nova Scotia, or New Brunswick), or visit those parts of the United States which lie south of the thirty-sixth degree of north latitude between the first of June and the first of November; or shall, without such previous consent thus endorsed, visit California or Oregon, or pass into the Territories of the United States lying west of the twenty-first meridian of longitude from Washington; or shall, without such previous consent thus endorsed, enter into any military or naval service whatever (the militia not in actual service excepted); or shall, without such previous consent thus endorsed, be personally employed as an engineer or fireman in charge of a steam-engine, or as fireman or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder; or in case he shall

become so far intemperate as to impair his health or induce delirium tremens, or shall die by his own hand, or in a duel or in consequence thereof, or by the hands of justice, or in the known violation of any law of the State or the United States or of any government where he may be, this policy shall be void and of no effect.

And it is also understood and agreed to be the true intent and meaning hereof that if the proposals, answers, and declaration made by the said Helen Pitkin, and bearing date the twentieth day of July, 1866,
66 and which are hereby made part and parcel of this policy as fully as if herein recited, and upon the faith of which this agreement is made, shall be found in any respect untrue, then and in such case this policy shall be null and void; or in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured or any part thereof, and this policy shall cease and determine.

And it is further understood and agreed that this policy shall not take effect and become binding on said company until the premium above named shall be actually paid to said company or to some person authorized by them to receive it.

And it is further agreed that in every case where this policy shall cease or become or be null or void all previous payments made thereon and all dividend credits accruing therefrom shall be forfeited to the said company.

In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this first day of August, one thousand eight hundred and sixty-six; but the same shall not be binding until countersigned by E. W. Pierce, agent at Kansas City, Mo.

GUY R. PHELPS, *President.*

W. S. OLMSTEAD, *Secretary.*

Countersigned at Kansas City, Mo., this tenth day of August, 1866.

E. W. PIERCE, *Agent.*

67 The annual premium required to continue this policy in force must be paid on or before the day of the date of the same, or the insurance ceases and the policy is void. The only evidence of payment of such premium which will be acknowledged by the company as valid and binding is a certificate of renewal, signed by the secretary of the company. Certificates for this purpose will be furnished (for delivery to policy-holders) to those agents of the company who are authorized to collect premiums on account of the company; but as such authority is liable to frequent changes and subject to be revoked without the knowledge of the insured, and as persons not so authorized may solicit payment of premium, representing that their receipt or indorsement will renew the policy, the policy-holders are cautioned not to pay renewal premiums to any person except upon delivery of a renewal certificate, issued from the office of the company and signed by the secretary. This caution is important to policy-holders to prevent payment being made to irresponsible persons or

those not authorized by the company to receive them, thereby not only losing the money paid but forfeiting the insurance also.

For the convenience of policy-holders these renewal certificates will be furnished to the agents through whom the policy was issued, or at the location where it was last renewed, to be delivered upon the payment of the premium, unless otherwise directed by the insured; but the possession of the renewal certificate is the only evidence to the policy-holder of
68 the authority of the agent to receive the premium.

Acceptance of the premium due on this policy by the company or its agents after the day upon which it is due must be considered as acts of grace or courtesy, and in no wise to be construed as forming a precedent for future payments or a waiver of the forfeiture of the policy according to the conditions therein expressed if any future payment of premium be omitted on the day it falls due.

Agents of the company are in no case authorized to make alter or discharge contracts or waiver forfeitures.

Proofs of death required.

1st. A certificate from the physician who attended the party during his last sickness, stating particularly the nature of the disease, its duration, and the time of death.

2nd. A certificate of a disinterested acquaintance of the deceased certifying to the time and fact of his death, and that he or she was the person insured by that name in this company.

3rd. A certificate from the undertaker, sexton, or clergyman who officiated at the funeral of the deceased and saw the body interred.

4th. A certificate from some intimate friend of the deceased of the age of the party at the time of his death.

These several certificates should be sworn to before a magistrate or other officer qualified to administer an oath or affirmation.

69 (Endorsement on the back of policy:) Exhibit A. No. 59513. The Connecticut Mutual Life Insurance Company, of Hartford, Connecticut. Assurance on the life of George E. Pitkin. Amount, $5,000.00 Date, August 1, 1866. Term of life. Annual premium, $160.00; extra do., $. When due, 1st August. Cash part of payment, $80.00; policy, $1.00; amount of note, $80.00—$161.00. Filed March 26th, 1879. Wallace Laws, clerk, by F. P. Clark, d. c.

70 EXHIBIT B.

No. 124976.] [$423.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

Age, 47.] [Premium. $251.16.

This policy of insurance witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the representations and declarations made to them in the application for this insurance, and of the sum of two

hundred & fifty-one dollars and sixteen cents, receipt whereof is hereby acknowledged, do hereby insure the life of George E. Pitkin (the insured), of Kansas City, county of Jackson, and State of Missouri, for the term of eight years from and after the date hereof, in the sum of four hundred & twenty-three dollars, for the sole use and benefit of Helen Pitkin (the assured), wife of the said insured, the said sum insured to be paid, at the office of this company in Hartford, Conn., to the said assured or her legal representatives, within ninety days after due notice and satisfactory evidence of the death of the said insured, during the continuance of this policy; or if the said assured be not then living, the said insured shall be payable as above to her children, or to their guardian if under age; or if the said insured shall survive said term of eight years from and after the date hereof, the sum above insured shall then be paid, at the office of this company in Hartford, Conn., to the wife aforesaid.

This policy is issued and accepted upon the following express conditions and agreements:

1st. That the answers, statements, representations, and declarations contained in or indorsed upon the application for this insurance, which
71 application is hereby referred to and made a part of this contract, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation, or concealment, then this policy shall be absolutely null and void; and, further, that no answer, statement, representation, or declaration made to any agent, solicitor, or any other person whatever, and not contained in said application, shall be taken or considered as having been made to or brought to the notice or knowledge of this company; and this company shall be held and considered as having no notice or knowledge of such answer, statement, representation, or declaration; and the said application shall be taken and held to be and to contain the only answers, statements, representations, or declarations made to this company in behalf of this insurance.

2nd. That the said insured is under this policy freely permitted to reside in any civilized abode in the Western Hemisphere lying north of the thirty-second parallel of north latitude, in the United States lying south of the said thirty-second parallel (excepting from the first day of July to the first day of November) and in the Eastern Hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east from Greenwich; and he may also pass as a passenger, by usual routes and means of public conveyance, to and from any port or place within the foregoing limits; but if he shall at any time during the continuance of this policy pass beyond or be without the foregoing limits, or shall be personally engaged in blasting, mining, or submarine
72 operations, or in the manufacture or transportation of highly inflammable or explosive substances, or as an employé in any capacity upon service on any sea, sound, inlet, river, lake, or railroad, or if he shall enter into any military or naval service whatsoever, whether voluntarily or otherwise (the militia, when not in actual service alone excepted), without the consent of this company previously given in writing in each or either of the foregoing cases, or if he shall die by suicide or in consequence of his violation of any law, or if he shall become so far intemperate as to impair his health or induce delerium tremens, or if he shall be convicted of felony,

then in each and every of the foregoing cases this policy shall become and be null and void.

3rd. That in every case in which this policy shall cease and determine or shall be or become null and void all premiums paid in respect of the same shall be forfeited to this company.

4th. That this policy shall not be assigned, but the same may be surrendered to this company and discharged at any time by the assured, if living, and, after her death, by the beneficiary hereof, under the statutes of Connecticut.

In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this contract, in the city of Hartford, this twenty-fourth day of September, A. D. one thousand eight hundred and seventy-three.

T. PRESTON, *V. President.*

JACOB L. GREENE, *Secretary.*

73 ☞ Agents of the company have no authority to make, alter, or change any condition of the policy nor to waive forfeitures thereof.

Ex'd, J. H. J. Wife paid up endowment.

Statute of Connecticut respecting policies of insurance issued for the benefit of married women.

SECTION 36. A policy of insurance on the life of any person expressed to be for the benefit of any married woman, or duly assigned, transferred, or made payable to any married woman, or to any person in trust for her or for her benefit, whether the same be procured by herself, her husband, or any other person, shall inure to her separate use and benefit, or, in case of her decease before payment of the same, to the use and benefit of her children or of her husband's children, as may be provided in said policy, independently of her husband, his creditors or representatives, or of the person procuring, assigning, or transferring the same, his creditors or representatives; Provided, that if the annual premium on any such policy exceed three hundred dollars, an amount equal to the excess of such premium over three hundred dollars, with interest thereon, shall inure to the benefit of such creditors: And provided further, that in case of the decease of such married woman before the decease of the life insured, leaving no children of herself or of her husband, the policy shall become the property of the person who has paid the premiums upon the same, unless otherwise provided by said policy.

Proofs of deaths required.

74 Blanks for the several certificates required to be made in proof of death will be furnished upon request.

(Endorsement on the back of policy:) Exhibit B. No. 124976. Endorsement insurance. Paid up. The Connecticut Mutual Life Insurance Company. Sum insured, $423. On the life of George E. Pitkin. Filed March 26th, 1879. Wallace Laws, clerk, by F. P. Clark, d. c.

KERSEY COATES, a witness called on the part of the plaintiff, being duly sworn, testified as follows.

Direct examination by Mr. LATHROP:

Q. Col. Coates, where do you reside?

A. In Kansas City.

Q. How long have you lived here?

A. Twenty-five years.

Q. Have you had any connection with the Missouri River, Fort Scott and Gulf Railroad Co.?

A. Yes, sir.

Q. What position was it?

A. President of that road and of the company from some time in '65 until, I believe, 1874.

Q. Did you know George E. Pitkin in his lifetime?

A. Yes, sir.

Q. How long had you known him?

A. Twenty years.

Q. What position did he hold at the time of his death?

A. Chief clerk to the cashier and auditor of the Fort Scott road.

Q. How long had he held that position?

75 A. He had held that position from the time of the completion of the road—about 1868, I think.

Q. Who was cashier and auditor of the road during the time of Pitkin's services?

A. Mr. Prescott most of the time or nearly all the time. I am not certain whether Pitkin was in before Prescott came there or not. He was either there or a clerk for Mr. Chanute, in the same office.

Q. What had Pitkin been engaged in prior to that time?

A. Immediately before his position as assistant cashier or chief clerk he had been assistant or clerk to Mr. Chanute, who was the engineer who built the bridge over the Missouri River here.

Q. How long was he there?

A. A couple of years probably.

Q. How long had he been living here and how occupied prior to that time?

A. Well, before that time he was in his—after he first came to Kansas City he was in the hardware business with his brother. After teat time I think he was engaged as a salesman or clerk in the hardware business, and after that I don't remember what he was doing.

Q. What year did he commence working for Chanute in connection with the bridge?

A. 1866 or '7.

Q. During the time you were president of the company you may state the character and efficiency of the services of Mr. Pitkin.

76 (Objected to by defendant's counsel as irrelevant and immaterial.

The court overruled the objection; to which ruling defendant's counsel then and there duly excepted.)

A. I regarded him as a very efficient man indeed; very capable, very faithful, and remarkably steady.

(To which answer defendant at the time objected, which objection was overruled; to which ruling of the court defendant at this time excepted.)

Cross-examination by Mr. CHANDLER:

Q. You say you knew Mr. Pitkin about twenty years?

A. Yes, sir; or a little more. From the time I first came to Kansas City.

Q. You say he was a very efficient man?

A. Yes, sir.

Q. Do you know whether his efficiency continued down to the time of his death?

A. I could not state that.

Q. Do you know anything of his habits during the time you speak of?

A. Yes, sir.

Q. Did you ever know of his drinking anything?

A. Of my own personal knowledge, up to 1874—that is the time I am speaking of now—I did not know of his drinking anything at all. I have an impression that during a period of six years he possibly did drink for a day or so, and that for the balance of the time he was absolutely abstemious; not tasting anything whatever.

Q. That was subsequent to '74?

A. No, sir; prior to '74.

77 Q. During what years?

A. I could not say. Of my own personal knowledge I don't know that he did then, but that was my impression.

Q. Don't you know that he was absent from business, which was attributable to that?

A. He was absent twice, I think, during that time.

Q. He was working under your supervision?

A. No, sir; but in the same office.

Q. How frequently did you see him?

A. Every day, unless absent from the city on business.

Q. You never saw any symptoms or indications of insanity about him?

A. Not at that time.

Q. Well, at any time?

A. No, sir.

Q. (By Mr. LATHROP.) Had you seen him on the Sunday, Saturday, or Friday preceding his death?

A. I think not.

Witness M. W. St. Clair.

M. W. ST. CLAIR, a witness called for the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. How long have you resided in Kansas City?

A. Thirteen or fourteen years; from about 1866.

Q. What positions have you occupied and in what business have you been engaged since you were here?

A. Cashier of the First National Bank up to the time of its failure.

Q. How are you occupied now?

A. Manager of the Stock Yard Branch of the Bank of Kansas City.

78 Q. Did you know George E. Pitkin in his life-time?

A. Yes, sir.

Q. How long had you known him?

A. I became acquainted with him soon after he came here, which was in June, 1866.

Q. How intimately did you know him from that time down to the time of his death?

A. I was very intimate with him.

Q. What was the occasion of your intimacy, if anything?

A. We were members of the same church, and he was junior warden at one time when I was senior warden.

Q. Anything else?

A. We were also members of the vestry.

Q. Were your relations intimate or otherwise?

A. Rather intimate.

Q. What position did Mr. Pitkin hold at the time of his death?

A. I think he was chief clerk to the cashier and auditor of the Fort Scott road.

Q. Do you remember the fact that in August, 1878, Mr. Prescott, the cashier and auditor of that road, resigned?

A. I know he resigned his position; I don't know exactly the time.

Q. Now, state whether Mr. Pitkin came to see you in reference to the position made vacant by the resignation of Mr. Prescott, and if so, what passed between you and it was.

79 A. Well, he came to see me soon after the resignation of Mr. Prescott. For some reason or other, I don't know why or how, he got the idea, I suppose, that I was going to make application for the situation myself, and requested that I should not. I told him that I had not thought of doing it, and of course would not.

Q. What did he say with regard to his candidacy for the position and his expectations with regard to it?

A. Well, he had talked with me once or twice about it. At one time he read me a letter that he had received from Mr. Merriam, I think treasurer of the road, which George construed into a promise that he should receive the position.

Mr. CHANDLER. If the gentleman remembers the contents of the letter let him state that, and not the construction that Mr. Pitkin put upon it.

Q. Yes; just state that.

A. I did not see the letter; he read it to me. I cannot state more than I was just stating then.

Q. What impression did that letter make upon the mind of Pitkin, as expressed to you? State whether or not he was sure of the appointment.

(OBJ. Objected to.)

Q. What did Pitkin state with regard to that?

A. He was very certain.

(OBJ. Mr. CHANDLER. We object. State what he said.

The COURT. Yes.)

80 WITNESS. After having read the letter to me, and when he was going away, he put it hurriedly into his pocket, and says he, "I am certain of receiving the appointment."

Q. How long was this before Pitkin's death, about?

A. Well, I don't know that I can say definitely; may be two weeks, may be three; I don't know.

Q. How often did you see him during the interval between that time and the time of his death?

A. I could not say.

Q. Several times?

A. Yes, sir.

Q. During those times did he say anything to you with regard to this appointment, his expectation of receiving it?

A. Well, nothing further than that he was expecting to receive it after the full changes were made.

Q. Now, did you see Mr. Pitkin on the street previous to his death?

A. Yes, sir.

Q. State where you saw him, about what time of day it was that you saw him, and what passed between you.

A. I met him at the corner of Missouri avenue and Delaware streets.

Q. At the foot of this building?

A. Yes, sir.

Q. What passed between you at that time?

A. Well, he was very much excited, and said he had got a letter which informed him that other parties had been promoted over him, and that they didn't give him the position, and he was very much excited.

81 I told him that there might be something better for him, he might get a better position; but he said he didn't want any other position, he wanted that one.

Q. Who did he say was promoted over him?

A. He remarked, "two boys," meaning Aldrich and Smith.

Q. What did he say about Prescott?

A. I think he said that Prescott had used his influence against him.

Q. How did Pitkin look at that time?

A. Well, he was very much excited.

Q. Was that about all that passed between you at that time?

A. Yes, sir.

Q. Did you see him again that evening?

A. I met him Saturday evening.

Q. About what time was it?

A. It was between six and seven o'clock. My wife and I went to market, and as we passed through the market-house Pitkin passed by me and says, "How are you, Bill?" I said, "My name is not Bill." "Oh, no; excuse me," and he passed on on the north side of the market-house.

Q. How did he look at that time?

A. He was very much excited, and my wife asked me what was the matter with George.

(OBJ. Objected to.)

Q. Never mind that. I wish you to state more particularly as to the appearance of Mr. Pitkin; the expression of his face, eyes, and

82 countenance, if you observed anything about it.

(OBJ.—MR. CHANDLER. We object to that as leading. Let him state fully how he acted and appeared.

The COURT. Yes.)

A. The only time that I could judge of his appearance was at the time I had the talk with him on Saturday here at the corner.

Q. How was it then?

A. He had a very wild look on his face; his face was flushed red and he was excited. I told him he had better go home and think the matter over, and that he could rest assured that Mr. Prescott was his best friend. He said there was no use in talking that way to him; that there was no use of giving him any such advice as that; he knew better.

Q. What was his manner of speech?

A. Very hasty.

Q. How were his sentences; long or short?

A. Short.

Q. What was his manner of speech ordinarily during your intercourse of several years?

(OBJ.—MR. CHANDLER. If your honor please, I would like to know the object of this. We may differ with the gentleman on the other side as to whether the fact that a man speaks in a hasty manner and in short sentences is any evidence of insanity or not, and if we are to measure these sentences I would like to have a few illustrations to know what he considers short.

MR. LATHROP. We withdraw the question.)

83 Cross-examination by MR. CHANDLER:

Q. Now, the first time that you noticed anything of an exciting nature was at an interview on Saturday morning?

A. Yes, sir.

Q. And you have told all that occur'ed, as you recollect it, there.

A. Yes, sir.

Q. He simply met you and stated that he had received a letter which communicated the fact that somebody else was going to get the place he expected?

A. Yes, sir.

Q. He seemed to regret it very much?

A. Yes, sir.

Q. And he talked about that subject all the time?

A. Yes, sir.

Q. And he talked like a man interested in the subject, or like any man talks who has a subject in which he is interested?

A. Yes, sir.

Q. There was nothing illusive about it; he was not talking about a matter that did not exist, but about a real subject, and he talked like a man interested in the matter he was talking about?

A. Yes, sir.

Q. Then you saw him again in the evening?

A. Yes, sir.

Q. And that interview was momentary; he simply spoke in passing?

A. Yes, sir.

84 Q. And the only thing you speak of as perhaps unusual is his calling you "Bill?"

A. Yes, sir.

Q. Is not your name Will or William?

A. No, sir.

Q. What is the W for?

A. He came back and asked me for them, and I told him where he could find them; I told him I had laid them on the bureau, and then I went and gave them to him.

Q. What next?

A. I went down-stairs to get breakfast.

Q. What time was that?

A. I don't know.

Q. Well, what did he do next?

88 A. He came rushing down after me and asked me to pump some water for a bath. I started the pump, but the water didn't seem to come, and I went in to see what was the matter. He was standing looking out of the window, and I said, Mr. Pitkin, "I thought you wanted a bath," and he said, "No, I don't" and rushed at me with a kind of foam on his mouth, and I rushed out of the door.

Q. Did you see him again that morning?

A. Yes, sir.

Q. When?

A. Just before breakfast time.

Q. What was he doing then?

A. Sitting on the porch.

Q. Did you have any conversation with him then?

A. I did not.

Q. Now, at the time you said you met him at the bath-room how did he look?

A. He looked very wild and frightened out of his eyes. He looked like some one that was crazy.

Q. Now, after breakfast what occur'ed?

A. Well, when he was sitting at the breakfast-table I went to get him some warm waffles, and while I was gone he went upstairs; I then went up to see what he was doing, and he was brushing his hat. I said, "Are you going to church?" and he said, "Yes." Then I said, It's very early to go to church; it is only half past nine." Then he turned away, and I saw him no more.

Q. Did you see him leave the house?

A. No.

89 Q. What did he have on?

A. He had on an old coat which he wore during the week, and a pair of old pants. He didn't put on any clean clothes or take any bath.

Q. What was his usual habit?

A. To take a bath, wash himself, and put on other clothes.

Q. Now, about the night before. Did you hear him at different times walking and talking?

A. I remember hearing him but once; that was all during the night.

Q. What time?

A. It was about ten when I laid down.

Q. How early was it next morning that you saw him?

A. About 4 o'clock.

Cross-examination by Mr. CHANDLER:

Q. What was there about this conduct that you thought strange?

A. Well, he seemed so cross. That was one thing that made me think there was something wrong.

Q. He seemed cross, and that was unusual?
A. Yes, sir.
Q. He was a little crosser that morning than usual?
A. Yes, sir.
Q. What else did you notice that struck you with great force?
A. What seemed strange to me?
Q. Yes.
A. Why, asking me to pump a shower bath and then rushing at me with the foam on his mouth and saying he did not.
90 Q. Now, where was this foam?
A. Coming out of his mouth, I suppose.
Q. What color was it?
A. White.
Q. How much was there?
A. Just a little.
Q. Could it have been mistaken for spittle?
A. No, sir.
Q. Now, why do you say that you rushed down-stairs, and rushed up-stairs, and rushed around generally; why do you use that expression?
A. I didn't rush upstairs at all.
Q. Didn't you say that when you went after the market-basket you rushed after it.
A. Yes, sir.
Q. Well, there was none of this frantic haste; you simply went down and got the market-basket and brought it up?
A. Yes, sir.
Q. There was nothing unusual about that?
A. Sir?
Q. There was nothing striking in your manner of getting the basket?
A. No, sir.
Q. Where did Pitkin do any rushing?
A. When he first came in and asked me for Mrs. Pitkin, and I told him she had gone to the country, he says, "I told her not to go to the country," and rushed into the room.
Q. When you say that he rushed in do you mean that he went in?
A. He walked in very fast.
91 Q. Faster than usual?
A. Yes, sir.
Q. He didn't seem to be pleased because Mrs. Pitkin had gone to the country?
A. He did not.
Q. That was one thing that seemed to displease him?
A. Yes, sir.
Q. He then got the market-basket and went down town?
A. He did not wait for the basket at the time, but rushed out of the gate and went down town.
Q. Why do you say that he rushed out of the gate, and went down town?
A. Well, I don't know that he rushed.
Q. What did you see unusual on Sunday morning except the circumstance about the bath?

A. Yes, sir.
Q. At what time?
A. Between 11 and 12 o'clock in the forenoon.
Q. Who else was present?
A. Philip Doppler.
Q. What did Mr. Pitkin say or do that morning?
A. He came in and said, "Harburg, I have to give you good-bye; I am going to a country where there is no return." I says, "George, what do you mean?" Well, he looked at me and says, "I mean what I say." He had a kind of a queer look about him, and, says I, "Are you going down South where the yellows fever is?" and he says, "No, I am going to a country where there is no return."
Q. How did he look?
A. He had a queer look; he had a kind of a wild look about him.
Q. What did he say in that same interview to Mr. Doppler, if anything?

96 A. He turned around to give Mr. Doppler a certificate to empower him to install the officers in the lodge, as he could not and would not be present, and as he went out I made the remark to Doppler——

(OBJ.—Defendant's counsel objected to the witness stating what he said to Doppler as or after Mr. Pitkin left the room as incompetent.)

Q. (By the COURT.) Was it with reference to his present appearance?
A. Yes, sir.
The COURT. He may answer.
(To this ruling of the court defendant's counsel then and there duly excepted.)
Q. Answer.
A. I made the remark to Doppler that "Pitkin is not at himself; George looks kind of crazy." Well, Mr. Doppler made the remark, "He does;" and that was the last I seen of poor George alive.
Q. Mr. Harburg, describe fully to the jury his appearance, his motions, and his actions—his whole conduct during the time he was in the store.
A. Well, his conduct was that of——
(OBJ.—Objected to.)
Q. What was his general appearance?
A. His general appearance was a very wild look—unusual to what his look had been before that.
Q. Had you ever noticed anything of that kind before that time?
A. I had not.

97 Q. You say that the time of this occurrence was between 11 and 12 o'clock; might it not have been a little earlier in the morning?
A. It might have been a little before eleven; I think it was about 15 minutes or so.

Cross-examination by Mr. CHANDLER:

Q. What do you mean by saying he looked wild?
A. He had a wild look.
Q. Well, what does that mean—a wild look?
A. When you look at a man sharp and open the eyes as far as you can.
Q. When I look at a man sharp and earnestly, you call that a wild look?

A. I do.

Q. And that is what you mean when you say to the jury that he had a wild look?

A. Yes, sir.

Q. Now, Pitkin, in his conversation with you, talked about himself, did he?

A. Yes, sir.

Q. And he talked about the election of officers?

A. Not to me; to Mr. Doppler he did.

Q. Were there officers to be elected?

A. Certainly—installed, not elected.

Q. Yes; there were officers actually to be installed at the time and place he spoke of?

A. Yes, sir.

Q. He talked rationally about that; said he could not be there and would not, and gave this gentleman a certificate authorizing him to install the officers?

A. Yes, sir.

Q. Did Mr. Pitkin, while in your presence, talk about anything that did not exist?

98 A. No, sir.

Q. He talked about natural subjects, didn't he?

A. Yes, sir.

Q. And when you asked him what he meant by saying he was going to a country from whence no traveler returns—or whatever he said—he repeated it, and told you he meant just what he said?

A. Yes, sir.

Q. Now, did he say anything more about it?

A. No, sir.

Q. Have you recited all the conversation that occurred at that time, as you recollect it?

A. Yes, sir.

Q. You saw nothing peculiar in his conduct or appearance except what you have stated?

A. I saw, when he was going to give the certificate to Mr. Doppler, that he could not write very well, and I think he gave it to Mr. Doppler to writ'.

Q. What was the difficulty? Did his hand tremble?

A. He seemed to be absent-minded.

Q. How?

A. He wanted to write and couldn't do it.

Q. Well, he was trying to write the certificate of appointment, and he talked about that and nothing else?

A. Yes, sir.

Q. You think the other gentleman wrote it for him?

A. Yes, sir.

99 Q. That is all that occur'ed about that?

A. Yes, sir.

Q. When he went out, he went alone?

A. Yes, sir.

Q. Neither you nor the other gentleman followed him?
A. No, sir.
Q. Now, is it not a fact that it was the man's statement that he was going to a country from which there was no return that struck you so forcibly—was that not the fact that impressed you?
A. Yes, sir.
Q. That was the thing that impressed you?
A. It impressed my mind that he was not well at his mind.
Q. That fact alone?
A. Yes, sir.
Q. If he had not stated that you wouldn't have noticed him particularly?
A. Yes, sir, I would by his looks.
Q. What looks?
A. He had a queer look.
Q. Well, you have already described that look.
A. Yes, sir.
Q. Now, when he came in what did he say?
A. He shook hands with me and said, "Mr. Harburg, I have got to give you good-bye."
Q. That was the first remark he made?
A. Yes, sir.
Q. Then you asked what he meant and he told you.
A. Yes, sir.
Q. That was after he made the remark about going to the country from which there was no return.
A. Yes, sir.
Q. How long was he in the store altogether?
A. May be 15 or 20 minutes.
Q. He talked about nothing except what you have stated, and he did nothing except what you have stated?
A. No.
Q. Did you know anything about his habits of drinking?
A. Well, I was with him two or three times a week, and we took a glass of beer or a glass of wine; but only one at a time.
Q. Well, you don't take two at a time up here, do you?
A. No; I mean during the time we were together.
Q. Well, what was the general rule? When you met was it the practice for you to drink together?
A. No.
Q. Did he drink in your presence?
A. Yes, sir.
Q. How frequently?
A. Once or twice a week.
Q. Do you know what his practice was as to that?
A. No, sir; I always seen him sober.
Q. Did you ever see him intoxicated?
A. No, sir.
Q. You never saw him under the influence of liquor?
A. No, sir.
Q. In any way?
A. No, sir.

101 Q. You always regarded him as a sober man?
A. I did.
Q. So far as you know, then, there was no reason why these men, who were his especial friends, and had this fixed interest in him, should not appoint him to the position he sought?
A. No, sir.

Re-examination by Mr. LATHROP:

Q. You say you occasionally drank with Mr. Pitkin?
A. Yes, sir.
Q. State to the jury what it was that you drank on such occasions.
A. A glass of beer or a glass of wine.
Q. And you say that you never drank more than one at a time?
A. Yes, sir.
Q. What did he drink at those times?
A. The same.
Q. Nothing stronger?
A. No, sir.

Witness Philip Doppler.

PHILIP DOPPLER, a witness produced on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. How long have you resided in Kansas City?
A. About six years.
Q. What position do you now occupy in the public service?
A. Deputy United States collector.
Q. How long have you occupied that position?
102 A. Since 1873.
Q. Did you know George E. Pitkin during his life-time?
A. Yes, sir.
Q. How long did you know him?
A. Three or four years.
Q. How intimately?
A. Not very intimately, but we met often at the lodges.
Q. Were you members of lodge together?
A. Yes, sir; he was a member of the Independent Order of Odd Fellows, and deputy district grand master of our lodge.
Q. What position did you hold?
A. Treasurer.
Q. Now, Mr. Doppler, I will ask you whether you met Mr. Pitkin at Harburg's on the Sunday morning on which he died?
A. Yes, sir.
Q. What time?
A. A little before 11 o'clock, or about eleven, I think.
Q. Who was present?
A. Mr. Harburg, I think, and may be one or two more.
Q. What did Mr. Pitkin say when he came into the store?
A. I don't know whether he came in after I did or was there when I came, but he says, "Brother Droppler, I can't install the officers of your

lodge next Friday. I want you to do it, and I give you authority." I asked him why, and he said he was going away to a land where nobody returns, or something like that.

Q. How did he look?

103 A. Very excited and red in the face. I noticed him particularly and looked at him, because his looks did not suit me very well; not as natural as he had before.

Q. Had you ever seen him look as on that morning?

A. No, sir.

Q. Was this authority to install the officers verbal or in writing?

A. In writing.

Q. Who wrote it?

A. Mr. Pitkin.

Q. State the manner of his writing.

A. I think, from the manner——

(OBJ.—MR. CHANDLER. We object. Let him state what occurred.)

Q. State what occurred.

A. He was very excited when he wrote it.

Q. Did he write it with ink or otherwise? How did he write it? Describe his manner.

A. He asked for a piece of paper from Harburg, and wrote it on the show-case, I believe. He was just excited, and made a mistake, and I called his attention to it and told him to make it different, and he did, in the number of the lodge.

Q. He made a mistake in the number of the lodge?

A. Yes, sir. I told him to rectify it, and he did so.

Q. What was said about that?

A. I made the remark that he ought to know the number of the lodge well.

Q. What did he say in reply?

A. I don't think he said anything; if he did, I don't recollect it.

104 Q. What is the No. of your lodge?

A. 173.

Q. What No. did he give it?

A. I think 123.

Q. How long was that the No.?

A. From its organization.

Q. How long is that?

A. I don't know; it must be before 1866.

Q. Was Mr. Pitkin ever connected with this lodge?

A. In one sense he was. He was deputy district grand master of our lodge; and during the time he was a representative of our lodge, too.

Q. Have you got the original authority that Pitkin gave you on that morning?

A. I have.

Q. Will you produce it?

A. Yes, sir, (handing paper to counsel).

Q. In whose handwriting is this?

A. Mr. Pitkin's.

Q. How long was Mr. Pitkin there, Mr. Doppler?

A. Probably ten or fifteen minutes.

Q. He did not stay long?

A. No, sir.

Q. As he passed out what remark, if any, to his appearance and condition?

(OBJ.—Objected to by defendant's counsel as incompetent.)

The COURT. I do not think that ought to be pressed any further.

Q. I will ask you to state what was said, if anything, when Pitkin left, in regard to his appearance and condition.

105 (OBJ.—Defendant's counsel objected; to the question, incompetent. The court overruled the objection; to which ruling of the court defendant's counsel then and there duly excepted.)

A. I made the remark to Harburg that in my opinion Pitkin is out of his head, kind of mad—insane.

Cross-examination by Mr. CHANDLER:

Q. Is this the paper that Mr. Pitkin wrote and gave to you?

A. Yes, sir.

Mr. CHANDLER. I offer it to the jury.

Mr. PRATT. We have no objection.

Q Now you have stated all that occur'ed there, have you?

A. All that I can remember.

Q. Now the conversation that you had with Mr. Pitkin was about the installation of these officers, was it?

A. Yes, sir.

Q. You did not talk with him personally about anything else?

A. No.

Q. All the conversation you had about that was what you stated, and he told you that he would not be there, and he wanted to give you authority to install the officers?

A. Yes, sir.

Q. And he wrote that paper as the authority, signed it, and gave it to you?

A. Yes, sir.

106 Q. Now you say there was some mistake about the No. of the lodge?

A. Yes, sir.

Q. He was deputy grand master?

A. Yes, sir.

Q. He had charge of the lodge in the district where he was?

A. Yes; he had charge of two only, ours and his.

Q. Well, do you know that personally?

A. I know there was two.

Q. Do you know whether there was any more; are you quite certain there was only two?

A. Let me think a little; I think there was only two; Wyandotte and ours.

Q. Are you positive?

A. I won't say positively.

Q. Do you recollect what the No. of the other lodge was; the one that you did not belong to?

A. No; I cannot recollect.

Q. Now, you do not regard that as any evidence of insanity in a man; the fact that he could not remember the No. of the other lodge in his district?

A. I can't say.

Q. Well, you cannot remember the No. of the other lodge, and you do not regard yourself insane?

A. No, sir.

Q. Then you don't think that amounted to much?

A. No, sir; I didn't think that amounted to much.

Q. What year did this occur in?

A. In 1878; the last of the year.

107 Q. Did he repeat it two or three times, that he was going to a country from which there was no return?

A. I think he said it twice.

Q. Some explanation was asked by Mr. Harburg?

A. Yes, sir; I think he asked Pitkin if he was going down South.

Q. Well, when he told you the second time, he told you clearly and explicitly?

A. He mumbled it out; but I understood it.

Q. Well, you didn't say anything to these gentlemen about his mumbling it?

A. No; but he had his head down.

Q. Was that when he was writing the paper?

A. No, sir; after he gave me the paper.

Q. Was there anything else said at that time?

A. There may have been some other talk; I do not remember.

Q. You did not go off with him?

A. No, sir.

Q. Nobody looked after him at all?

A. No, sir.

Q. He passed out of the store and went on his way?

A. Yes, sir.

Q. Now, you have spoken of a wild look that he had?

A. Yes, sir.

Q. Just describe that look.

A. It is a hard thing to do.

Q. Do the best you can.

A. It is what everybody means by a wild look; and everybody knows pretty well what a wild look is. It is different from any other.

Q. In what respect?

108 A. His face was flushed, his eyes opened intensely wide. That is what I call a wild look. Most everybody understands what a wild look is.

Q. Well, I merely wanted to know how it impressed you?

A. I cannot explain it any better.

Q. Had you never seen his face flushed before?

A. I hadn't paid any attention before that day.

Q. What called your attention to it then?

A. Well, I only paid attention to it because he made the remark that he was going to a country where there was no return.

Q. Well, wasn't that remark the key—the whole thing, and didn't you begin to open your eyes wide then and didn't you have a wild look?

A. I can't say; there was no looking-glass there.

Q. What is your idea; do you think you did or did not. Did it make any impression on you?

A. I don't know that it made much impression on me, only what I have said.

Q. That is all?

A. I thought it was something strange.

Q. Well, that is all you thought about it?

A. Yes, sir.

Witness A. C. Strein.

A. C. STREIN, a witness called for the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. Mr. Strine how long have you resided in Kansas City?

A. About fifteen years.

109 Q. What is your business?

A. I keep a saloon and restaurant.

Q. Did you know George E. Pitkin in his life-time?

A. Yes, sir.

Q. How long prior to his death?

A. 5 or 6 years.

Q. Was he in your place on the Sunday morning that he killed himself?

A. Yes, sir.

Q. About what time?

A. About 11 o'clock.

Q. Explain to the jury where your place is with reference to the place of Mr. Harburg.

A. Harburg is right around the corner on Main street, and mine is No. 3 Missouri ave., between this building and the corner.

Q. Where is your place with reference to the place where Pitkin was engaged?

A. His office was over on Broadway.

Q. So in coming along from Mr. Harburg's store to his office he would pass your place if he came up Missouri ave.?

A. Yes, sir.

Q. Now state to the jury what passed between you and Mr. Pitkin that morning when he came into your place.

A. He asked for a glass of wine, and I gave it to him. He said he hadn't had a drink yet that day, or since the one he had last night from me—that was a glass of wine. He said, "I may look queer this morning or

110 drunk to other people, but I aint drunk." He said, "Some people might think me drunk, but I am not; I am not drunk in my body but I am in my mind."

Q. How did he look?

A. He looked unusual to me.

Q. Describe fully his appearance.

A. He had on his old clothes and his neck-tie was out of shape, his face was red, and his eyes staring at me, which made me think he was quite out of his usual way.

Q. Have you stated all that occurred? if not, state fully everything that occurred from the time he came in until he went out.

A. I have stated all that I recollect at the present time.

Q. How did his appearance and the look that you have described compare with his usual appearance prior to that time?

A. Quite different.

Q. In *in* what respects?

A. He looked in his face quite red, and his eyes had quite another expression.

Q. What sort of an expression?

A. He had them open wide, with a look that was wild, and he looked around the room awhile and walked up and down and seemed very restless. He would not stand at one place like he usually did, but walked up and down. I spoke a few words after that, but I did not notice him very much, for I was very busy.

Q. Mr. Strine, state whether or not from his looks, actions, and
111 manner, and also what he said, you regarded him at the time as in his right mind.

(OBJ.—The defendant's counsel objects to the question as incompetent.)

The COURT. I think that is hardly competent yet.

Q. Just state to the jury what impression was made upon you from what you saw as to Mr. Pitkin's condition.

(OBJ.—Defendant's counsel objected to the question as incompetent.

The court overruled the objection; to which ruling of the court defendant's counsel then and there duly excepted.)

A. My impression was that he seemed to be quite out of his head that morning. I could not say the reason. I didn't know then anything about his disappointment; I found that out afterwards.

Cross-examination by Mr. CHANDLER:

Q. Were you a friend of Mr. Pitkin's?

A. I could not say I was.

Q. You were quite intimately acquainted with him?

A. No, sir.

Q. How are you able to describe, then, his appearance at that time as distinguished from his general appearance?

A. He was a guest of my house and used to come there to eat and play billiards and I knew him.

Q. Did he spend his evenings there?

A. Sometimes.

Q. How late?

112 A. From 9 o'clock till about 10 o'clock, sometimes eleven.

Q. How frequently?

A. About two or three times a week, sometimes 4 times, and sometimes he would not come for a month or so.

Q. Did he usually drink while there?

A. Yes, sir; a glass of beer, or may be three or four during the evening.

Q. Any wine?

A. Sometimes; but his usual drink was beer.

Q. But on all occasions he usually drank something?
A. Yes, sir.
Q. And played billiards?
A. Yes, sir; or pool.
Q. Didn't he frequently stay there until 11 o'clock?
A. No, sir.
Q. Well, he was there you say about three times a week?
A. Yes, sir.
Q. Was he there some weeks much oftener?
A. No, sir.
Q. Did any particular person come with him?
A. Well, sometimes friends from the lodge came with him.
Q. It was his universal practice when he left the lodge to come to your place and remain there till about 11 o'clock?
A. Yes, sir.
113 Q. And at those times he usually drank more or less all the time?
A. Well, three or four glasses of beer through the evening.
Q. There was quite a number of people there?
A. No, sir; not in the billiard-room.
Q. Did you have any one assisting you?
A. No, sir; I attended to that myself.
Q. Now, what particular appearance did he present that you have tried to describe here?
A. I could not tell more particularly; it was unusual to me and I could not discribe it any other way.
Q. Was he alone?
A. Yes, sir; he came in by himself.
Q. When he passed out of your place you paid farther attention to him?
A. I could not; I was busy.
Q. Well, the actual fact is that he did not make impression enough on you to make you look after him at all?
A. No; I saw he was not drunk.
Q. That is the reason?
A. Yes, sir.
Q. If you had thought he was a man likely to injure himself you would have taken interest enough in him to look after him a little?
A. Undoubtedly; but I didn't think of that at all.
Q. So his appearance was not sufficiently striking to attract your attention that way?
A. No, sir.
Q. Did he say anything about killing himself, or anything with reference to that?
114 A. Not to me.
Q. He took a glass of wine, you say?
A. Yes, sir.
Q. And staid a few minutes with you and left.
A. Yes, sir.
Q. He didn't impress you altogether sufficiently to excite any personal interest in him—you did not look after him?
A. No.

Re-examination by Mr. LATHROP:

Q. You said that Mr. Pitkin was accustomed to drink two or three glasses of beer at your place and at other times some wine; now state to the jury whether you ever saw him drink whiskey or liquors of a kindred sort.

A. I dont' think that I sold him a half dozen drinks of whiskey during that six years.

Witness George Gaston.

GEORGE GASTON, a witness called on part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. Mr. Gaston, how long have you lived in Kansas City?

A. About thirteen years.

Q. What is your business?

A. I keep a saloon.

Q. Did you know Geo. E. Pitkin?

A. I did, sir.

Q. How long did you know him?

A. About 7 years.

Q. How frequently did you meet Pitkin during those years?

115 A. I met him sometimes once a week and sometimes 2 or 3 times a week, and sometimes not for a month.

Q. In connection with your saloon, what else do you keep for the public?

A. I keep a lunch-room, 12 to 1 o'clock.

Q. How long have you been keeping that lunch-room?

A. About 3 years.

Q. How often was Pitkin in the habit of coming down and taking lunch at your place, if at all?

A. For 8 or 9 months he came there regularly every day.

Q. How generally do citizens come to your place and take lunch in the middle of the day?

A. Almost every day.

Q. Well, state to the jury from your acquaintance with Mr. Pitkin, from his general character, temper'ment, and disposition, whether he was cheerful and genial, or otherwise.

A. I always know him to be a cheerful and pleasant gentleman. He came to my place every day at lunch time and had his lunch, the same as my other customers.

Q. Did you see Mr. Pitkin on the Sunday morning on which he killed himself?

A. Yes, sir.

Q. About what time *a* day?

A. I think it was about 11 o'clock.

Q. Explain to the jury how your place stands in relation to the places of Mr. Strien and Mr. Harburg.

116 A. Mr. Harburg is on Main street, my place is on the corner next to the gas office and Mr. Strien's about 4 doors east of me.

Q. On Mo. ave.?

A. Yes, sir.

Q. Where was Mr. Pitkin's office?

A. In the Ft. Scott building, on the cor. of 6 and Broadway.

Q. In coming up Mo. ave. this way, and going to his office, would he pass Strein's before getting to your place?

A. Yes sir; he would pass Strein's first.

Q. Now, I wish you to go on and state to the jury in your own way exactly what passed between you and Mr. Pitkin on that Sunday morning when he came into your place.

A. About 11 o'clock, I think that was the time, I was waiting on some persons (some customers of mine) when Mr. Pitkin came in by himself. He waited until I got through and then he says to me, "You are working very hard aint you?" and I says yes. And then he says "It is no use working hard in this world; we are all working down into the ground and I am going to-day." I did not pay much attention to that, but asked him what he wanted, and he said "a glass of wine," I gave him the glass of wine, and he said to me, "That his children were robbed and that he could not live now, and that he intended to take two lives that day." That alarmed me a little; and I asked him what he meant, and he said that he intended to kill Mr. Prescott and himself; that Mr. Prescott was
117 to blame that he did not get the place that he expected to. I told him that was very unwise, and that if he should kill Mr. Prescott and himself, he would be doing a very foolish thing, and that it would be a frightful stain upon his children; and I said to him "If your children should pass his children when you are dead and gone and they should point to your children and say there goes the children of the man who murdered my father, it would be a horrible thing." He put his hand on his forehead in this way (rubbing his forehead briskly with the right hand), and says, "Good-bye, I am going to kill myself," and he went out of the room.

Q. How did he look?

A. He looked very excited and wild.

Q. How was the expression of his eyes?

A. It seemed to me that the gentleman was in an abnormal condition.

Q. Explain to the gentleman of the jury what his condition and actions were.

A. His conduct was that of a man whose faculties were paralized with grief or something which I could not explain; but the way he went out he seemed in very depressed condition.

Q. Now, from what he said and did while in your place, I will get you to state to the jury what impression was made upon your mind.

(OBJ. Objected to by defendant's counsel as incompetent—and upon the ground that no foundation has been laid.)

118 The COURT. I have gone as far in that direction as I intend to.

Q. What impression was made upon you in his conduct, actions, and talk while in your place on that day?

(OBJ.—Defendant's counsel renewed his objections.)

The COURT. It ought not to be encumbered with the preliminary question, but he may answer it.

(To this ruling of the court defendant's counsel then and there duly excepted.)

A. Well, it alarmed me, as he was a member of my lodge, and I thought he was in an abnormal condition. It seemed to me that he was in an abnormal condition, and that he did not know what he was doing.

Q. That was the last you saw of him, was it?

A. Yes, sir.

Cross-examination by Mr. CHANDLER:

Q. Did you notice where he went to after he left your place?

A. I only went to the door, and he went down Mo. ave.

Q. Did you see him go into the store of Mr. Strien's?

A. I could not say whether he did or not.

Q. Have you not stated that you saw him go into Mr. Strien's?

A. I think not.

Q. Do you recollect whether you did see him go into Mr. Strien's or not?

A. No, sir.

Q. Was there any one with you standing in the door at the time?

119 A. There was two or three gentlemen there, but I cannot recall who they were, because I was excited myself at the time.

Q. Did not this occur, that you three gentlemen looked to see where he went and saw him go into Strien's and remarked then to each other he was drunk?

A. No, sir.

Q. Did you hear that expression?

A. No, sir.

Q. But you might have told parties that?

A. No, sir.

Q. How far is Strien's place from you?

A. About four doors.

Q. In the direction he went?

A. Yes, sir.

Q. Was he going towards his office in the direction he left from your place?

A. No, sir.

Q. He was going away from his office?

A. Yes, sir.

Q. Did he say anything else to you besides what you have mentioned?

A. That is all.

Q. Did he ask you if he owed you anything?

A. He might have done so; I do not recollect.

Q. Haven't you so stated that he asked you if he owed you anything, and you told him no, and then he stated what you have said?

A. I don't know; he never did owe me anything.

Q. Now, he talked to you about killing himself and Mr. Prescott?

120 A. No, he said he would kill Mr. Prescott and then himself. He was going to take two lives.

Q. Then you asked him who they were and he told you?

A. Yes, sir.

Q. You then talked to him about killing Mr. Prescott and advised him not to do it, and told him of certain consequences of the result that would affect his children?

A. Yes, sir.

Q. And he accepted your suggestions?
A. I don't know whether he did or not.
Q. Well, he then said he would then go and kill himself?
A. Yes, sir.
Q. After you explained to him why he should not kill Prescott, he yielded to that extent?
A. I can't say whether he did or not.
Q. Well, he says, "I will then kill myself?"
A. Yes, sir.
Q. How long was it after that that he did kill himself?
A. I presume about 1½ hours; that is my best recollection.
Q. Now, in your talk with him, you advised him not to kill Prescott?
A. Yes, sir.
Q. You did not say anything to him about not killing himself?
A. Well, I could not answer that, because I would not advise anybody to kill himself. I did not say he should kill himself. I said he
121 should not kill himself or Mr. Prescott either. Then I told him what would be the consequences to his children; that it would be a stain on his children.
Q. But he did express to you a purpose before that when he first came into your place to kill both Prescott and himself?
A. Yes, sir.
Q. And within an hour you learned that he had killed himself?
A. Yes, sir.
Q. Now, what was there outside of his talk about killing himself that attracted your attention?
A. His wild looks.
Q. What was the nature of those wild looks?
A. Well, I have not the command of the English language to give you a correct definition, but I can only give you my idea by saying he was in an abnormal condition.
Q. Of course I do not want to embarrass you in your description, but state how he was peculiar.
A. He was not natural.
Q. How?
A. Well, he was unnatural.
Q. What was there about his look that was peculiar?
A. Well, I cannot explain it any more than to say he was in an abnormal condition.
Q. You could not see his condition nor appearance?
A. Yes, sir; I could.
Q. What was it?
A. He was in a depressed mood; in an abnormal condition, as I understand it.
Q. What do you mean by abnormal condition?
122 A. Well, as I understand abnormal, it means unnatural, and if you will allow me to illustrate, I will simply say this: If you take a green plant that is out in the air and sunshine, it grows straight, and it is in a normal condition, but if you put a blanket over it, its leaves become yellow and unhealthy, and that is an abnormal condition.

Q. Well, there had been no change of that character in him?

A. I don't know.

Q. When had you seen him previous to that?

A. Well, for 3 or 4 days previous I hadn't seen him, but before that I had seen him every day for a month.

Q. Well, he was always cheerful up to this particular interview?

A. Yes, sir.

Q. The day previous you detected no change in him?

A. Well, I could not say as to the day previous, as he was not in my house.

Q. Well, the last time you saw him you considered him perfectly sane?

A. Yes, sir.

Q. Well, when he came into your house and began to talk about self-destruction, that arrested your attention?

A. Yes, sir.

Q. If he had said nothing about that, but had called for his wine, drank it, and gone out, you would have thought nothing about it?

123 A. No, he called me up and told me that it was the last glass of wine that he would ever take with me, and his talk alarmed me. I tried to console him and gave him my humble advice, as I presume anybody else would do. His last remark to me was that he would kill himself, and he walked out of my house.

Q. Now, if it had not been for the talk of self-destruction; if he had simply taken his wine and passed out, you would have noticed nothing peculiar about him?

A. I don't know.

Q. Wasn't that your answer a moment ago?

A. If my attention was not called to it I might not, but if he had drank with me or not I would have discovered that he was in an abnormal condition.

Q. Well, now, you of course looked after him a little as he went out?

A. Yes, sir.

Q. You went after him to see that he did not kill himself?

A. No.

Q. You did not?

A. No.

Q. Were you not interested in him that much?

A. Yes, sir; I was interested in him after that statement, and I went out to see where he went to, but people came in, and that called me to my business, and I went back.

Q. This man had been coming to your place for 7 years?

124 A. Well, I knew him 7 years, but he came to my place for about three years.

Q. Well, he told you that he was going to kill himself and went out?

A. Yes, sir.

Q. And you followed him?

A. Yes, sir.

Q. But went back to wait on somebody else and didn't go to see whether he did kill himself or not?

A. I told you that I went out to see where he went, but while I was

standing in front talking to some gentlemen he went down Missouri ave. and I went back to my place.

Q. You didn't call in a policeman or any one else to look after him?

A. I did.

Q. Who was it?

A. I remember it now, it was Bill Taylor.

Q. Where is he?

A. He is building a depot in Atchison.

Q. What did you say to Taylor?

A. I told him I am afraid Mr. Pitkin will commit a rash act, and if he would be kind enough to go to the livery stable and get my horse and buggy and get his friend H. P. White to come down and see after him, as I had to keep in my place, and he said he was afraid to drive my horse, for he was wild and he would not undertake it.

Q. Now, didn't these gentlemen standing in your door, when they saw him come out and go in Strine's, didn't they then tell you that it
125 was no use to bother with him, that he was drunk?

A. No, sir.

Q. Didn't they so state?

A. No, sir.

Q. Haven't you so stated?

A. No, sir.

Q. That is all you did in the matter?

A. Yes, sir.

Q. And you said and did nothing more?

A. Not that I remember of now. I thought of it all the week. I was excited about it.

Q. Do you tell the jury that if you had believed that this man really intended to kill himself that you would have taken no more trouble than you did to prevent it?

A. Sometimes a man makes a statement——

Q. Just answer the question.

A. Please repeat it.

Q. Why do you tell the jury that you believed that this man intended to kill himself if you took no more trouble than you say you took in order to save him?

A. I can't answer that question. I could not say whether he would kill himself. If anybody comes and says I will kill myself, you feel annoyed about it, but I could not say positively that he would kill himself.

Q. It was simply an annoyance to you?

A. If you call it such.

Q. Well you call it such—it did not make impression enough on your mind to induce you to do anything more than you did do?

126 A. Well, your question I can't answer, or I do not understand it

Re-examination by Mr. LATHROP:

Q. You stated on cross-examination that you tried to get Mr. Taylor to go get your horse and drive for Judge White, Pitkin's friend, in order to look after him.

A. Yes, sir.

Q. Now, I will get you to state whether after you failed to get Taylor to go because he was afraid of the horse, if you did not try to get somebody else.

(OBJ.—Objected to as leading.)

Q. State whether or not you made efforts to get somebody else to go after Taylor declined.

A. I spoke to several persons about it, and told them that I could not leave but I do not remember who they were.

Q. I will ask you if you did not speak to Mr. Burns, who was present?

A. Yes, sir, you are right; I remember that I told him that there was my horse, and he should go after him.

Recross-examination by Mr. CHANDLER:

Q. What did Burns say?

A. He stood awhile, and then said "Oh, that is one of his crazy spells."

Q. Did he say crazy spells or drunken spells?

A. Crazy spells, as I remember.

Q. What did you do after that?

A. I thought he understood it, and I went into my house.

127 Q. That is, you thought if he was crazy before, he was crazy now, and therefore you lost all interest in him.?

Q. Well, would that not stimulate you in your efforts, and confirm you in the opinion that he was crazy?

A. Well, I don't know.

Witness W. J. Ferry.

W. J. FERRY, a witness called for the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. LATHROP:

Q. Mr. Ferry, how long have you resided in K. City?

A. About eight or nine years.

Q. What is your business?

A. I am an attorney.

Q. You are a member of the firm of Pratt, Brumback and Ferry?

A. Yes, sir.

Q. A partner of Mr. Pratt's?

A. Yes, sir.

Q. What relation does your firm, or does Mr. Pratt, the senior member of the firm, bear to the Fort Scott road?

A. General attorney.

Q. How long has he been such?

A. About ten or twelve years.

Q. Where are your law-offices located?

A. In the general offices of that road, the Fort Scott building, cor. 6th and Broadway.

Q. Where were they relative to the offices of the auditor and

128 cashier of that road during the 1878?

A. On the floor immediately above.

Q. Did you know George E. Pitkin in his lifetime?

A. I did.

Q. How long?
A. Since '72.
Q. What position did he occupy?
A. Chief clerk in the auditor's office.
Q. Who was the auditor?
A. C. H. Prescott.
Q. Do you remember the fact that Mr. Prescott resigned in '78?
A. I do.
Q. Who was in Mr. Prescott's office at that time beside Mr. Pitkin?
A. Well, there were several clerks.
Q. I mean in Mr. Prescott's office?
A. Mr. Aldrich, Mr. Smith, and Mr. Pitkin.
Q. What do you know, if anything, as to Mr. Pitkin's candidacy for the place left vacant by Mr. Prescott's resignation?
A. I simply know that he was an applicant for it.
Q. What did you know as to whether Aldrich and Smith were applicants?
A. Nothing.
Q. About how old was Pitkin?
A. I should think he was in the neighborhood of 50.
Q. How old were Smith and Aldrich?
(OBJ.—Objected to as immaterial.)
Q. Well, did you see Mr. Pitkin on the morning he killed himself?
129 A. I did.
Q. About what time?
A. Well, something after ten o'clock.
Q. Where did you meet him?
A. Immediately in front of the office.
Q. Who was present?
A. My partner, Mr. Pratt & myself.
Q. What occurred? State it fully to the jury.
A. I came down Broadway, walking, and Mr. Pratt came down from his residence on Washington street, in a street car, and got out on the cor. of 6th and Broadway, and we went there in front of the office. Mr. Pitkin was standing very near the door, and as we passed up the stairway going to our office we both said, "Good morning," to him, and Mr. Pratt says, "Pit., why ain't you at church?" Mr. Pitkin said, "I am not going to church, I am going to hell;" and we immediately passed on up stairs and into the doorway, but as we started up stairs, Pitkins stuck his head into the door and says, "Do you want to send any word to him?" Mr. Pratt says, "To whom?" "To the devil; I am going to hell;" and he turned immediately and went out of the door.
Q. How did he look during this conversation?
A. Well, he seemed very much agitated and nervous; his face was flushed; the pupil of his eye dilated and bright, and there was no expression in it, it seemed to me.
Q. What impression did he make upon you from his conduct, actions, manner, expressions, and what he said?

130 (OBJ.—Defendant's counsel objected to the question on the ground that no foundation had been laid.

The court overruled the objection, to which ruling of the court defendant's counsel then and there duly excepted.)

A. The impression left on my mind was that he was crazy, and didn't know what he was doing.

Cross-examination by Mr. CHANDLER:

Q. What did you do after you got that impression?

A. Nothing.

Q. Nothing at all?

A. Well, I walked up-stairs and into my office.

Q. Just let him go?

A. Yes, sir.

Q. He was an acquaintance of yours?

A. Yes, sir.

Q. But you had no interest in him whatever?

A. Yes, sir; simply as an acquaintance.

Q. You walked into your office. The fact that he was agoing to kill himself was a matter of no consequence to you?

A. It would have been had I known it; but I had no idea that he was going to kill himself.

Q. It did not impress you that he had any such purpose?

A. No, sir.

Q. Now, Mr. Ferry, you say he had no expression in his eyes?

A. He had a vacant, crazy expression, if I may so express it.

Q. Are you familiar with crazyness?

A. Somewhat.

131 Q. What has been your experience?

A. I have had none particularly.

Q. Have you ever seen or known a lunatic?

A. Yes, sir.

Q. How intimately did you know these lunatics?

A. Not very intimately.

Q. Well, what was your knowledge of them?

A. I saw them several times.

Q. You never had any care of them?

A. No, sir; or but with one; I had no particular care over her, but was in the house where she was.

Q. Well, that circumstance did not enable you to determine the condition of this man?

A. Not at all.

Q. You have had no experience with insane people which would enable you to tell the condition of Mr. Pitkin?

A. No, sir.

Q. How long was this interview that you have referred to?

A. About as long as I was occupied in stating it.

Q. Did you have any impression at the time as to his condition, or did you form that afterwards?

A. I expressed it as I went up-stairs to Mr. Pratt.

Q. You gave expression to it then?

A. Mr. Pratt and I both.

Q. I am not asking you as to Mr. Pratt, but what your own opinion was.

A. Well, I said to Mr. Pratt as went upstairs, "The old man is crazy, isn't he?"

132 Q. Why didn't you pay some little attention to him if you really thought he was crazy?

A. I don't know why I did not.

Q. Have you no real explanation to give?

A. No, sir.

Q. Well, if you thought he was crazy why didn't you assist or aid him, being connected with the same road?

A. Well, when I was impressed with the fact that he was crazy there was no impression made upon my mind that he was going to kill himself or harm anybody at all.

Q. Well, with a crazy man there is always some danger of that.

A. Yes, sir.

Q. Was that the reason you did not?

A. No, sir.

Q. You have no reason to give, then?

A. No, sir.

Q. Yet you knew him well?

A. Yes, sir.

Q. You knew his family very well?

A. I knew he had a family.

Q. You knew his wife?

A. Yes, sir.

Q. You knew how many children he had?

A. No, sir; I knew he had a wife and children, but I did not know how many.

Q. Now, you met him that morning at the entrance of your office building?

A. Yes, sir.

Q. And this conversation occurred that you have detailed?

133 A. Yes, sir.

Q. What became of you and Mr. Pratt?

A. We went on up to our office.

Q. Neither one of you looked after him?

A. No, sir.

Q. Mr. Pratt had known him some time?

A. Yes, sir; as long as I had, or longer.

Q. Had you ever known Pitkin to show any symptoms of insanity before?

A. No, sir; I don't know that I ever did.

Q. Under the light of what transpired afterward you are satisfied that he then and there intended to kill himself?

A. I won't say that.

Q. Will you say the contrary?

A. No, sir; I do not know anything about that.

Q. What idea did you get from his saying he was going to hell?

A. Well, I don't know that it left any serious impression on my mind

until subsequent events; that is, as to what his intention was when he made that remark.

Q. Havn't you look at the whole transaction from that point and judged of his sanity in the light of the subsequent event?

A. No, sir; from what passed through my mind before, and I so expressed myself before.

Q. To Mr. Pratt?

A. Yes, sir.

Q. Well, you said, "The old man is crazy, isn't he?"

A. Yes, sir.

Q. Why did you ask that?

134 A. Well, I made the remark just as any one would under the circumstances.

Q. How long after that did he kill himself?

A. Perhaps an hour and a half.

Q. Did you see him between that time and the time of his death?

A. I saw him just previous to his death.

Q. How long previous?

A. I saw him just as his head struck the floor.

Q. Did you know that he had had an interview with anybody before he shot himself?

A. I didn't know it then; I know it now.

Q. You don't personally know it?

A. No, sir.

Q. Did you know anything of Mr. Pitkin's habits of drinking?

A. No, sir; I never saw him under the influence of liquor in my life. I never saw him when I had a suspicion that he had been drinking.

Q. Did you associate with him?

A. Every day, in the office.

Q. Well; in any other way?

A. No, sir.

Witness H. C. Sprague.

H. C. SPRAGUE, a witness called for plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. How long have you lived in Kansas City?

A. Five years.

Q. What position do you occupy now?

135 A. Superintendent of telegraph of the Fort Scott road.

Q. How long have you held that position?

A. Five years.

Q. Did you know George E. Pitkin in his life-time?

A. I did.

Q. How long?

A. Five years.

Q. Where was your office relative to the office occupied by the auditor and cashier of the road at the time of Pitkin's death?

A. At the opposite end of the hall.

Q. On the same floor?

A. Yes, sir.

Q. Did you see Mr. Pitkin on the Sunday morning that he killed himself?

A. I did.

Q. About what time?

A. My recollection is it was about 9 o'clock.

Q. Where did you see him?

A. In my office.

Q. What occurred when he came in there? State to the jury all that happened.

A. Well; he didn't stop there long; he came in and looked around with a vacant stare; put his hand over his head this way, [illustrating] and passed out. I don't remember of his saying anything to any one, at all.

Q. What impression did he make upon you at the time he was in the office?

(OBJ.—Defendant's counsel objected to the question as incompetent.

136 The court overruled the objection, to which ruling defendant's counsel then and there duly excepted.)

A. I saw him but for an instant only. I had no time to form an impression at all.

Cross-examination by Mr. CHANDLER:

Q. How long was this previous to his death?

A. I think it was about three hours.

Q. He just stepped into your office and out?

A. Yes, sir.

Q. He made no unusual impression upon you?

A. No, sir.

Q. And you formed no impression, of course?

A. No, sir; I was sitting back of the railing when he came in, and I did not see him long enough to form any impression about him at all.

Witness J. H. Aldrich.

J. H. ALDRICH, a witness called on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. How long have you lived in Kansas City?

A. Going on 12 years.

Q. How long have you been engaged with the Fort Scott road, if at all?

A. A little over four years.

Q. What position do you now hold?

A. Cashier.

Q. Did you know George E. Pitkin in his life-time?

A. Yes, sir.

Q. How long?

A. From the time I went into the office.

Q. What time was that?

137 A. June or July, 1876.

Q. What position did he occupy at the time you went into the office?
A. Chief clerk.
Q. How long did he hold that position?
A. I don't know; some years.
Q. What position did you hold?
A. I was Mr. Prescott's cashier.
Q. What position did Mr. Prescott hold?
A. He was auditor and cashier.
Q. Who else was in the immediate office with you?
A. Mr. Smith was in the same office—Charles Smith.
Q. Who else?
A. Mr. Pitkin.
Q. What position did Mr. Smith occupy?
A. He was a clerk in the office.
Q. Now, you remember the fact of Mr. Prescott's resignation in August, 1878?
A. Yes, sir.
Q. Do you know the fact that Mr. Pitkin was an applicant for the vacancy?
A. Yes, sir.
Q. Who else were applying for advancement besides Mr. Pitkin?
A. Mr. Smith and myself expected to receive it.
Q. What was the result? Who were appointed?
A. Mr. Smith was appointed acting auditor and I was appointed acting cashier.
Q. When were these appointments announced?
A. The last day of September, I think. The circular was issued the first day of October, I think.
138 Q. I will get you state to the jury whether or not the actual announcement had been made during the last days of September, previous to the 29th.
(Obj.—Objected to.)
Q. State when it was made.
A. I think we knew of it a few days before the circular was issued.
Q. Now, were you in the office on the Sunday morning that Pitkin killed himself?
A. I was.
Q. How often did you see him that morning?
A. Twice.
Q. What passed between you at the first interview?
A. I don't believe anything passed between Pitkin and myself.
Q. How long was he in the office?
A. Four or five minutes.
Q. When did you next see Mr. Pitkin?
A. I think in about half or three-quarters of an hour after that.
Q. At the first interview what passed between you, so far as any conversation is concerned; what did he say to you?
A. I don't think he spoke to me.
Q. What question did he ask any one in the office?

A. I don't recollect that. I know he came in and said something, but I did not understand what.

Q. What did he do when he came back the second time?

A. He asked for Mr. Prescott.

Q. Who did he ask?

139 A. He made the general remark.

Q. What answer was given?

A. That Mr. Prescott was in the private office.

Q. How was the private office connected with the office in which you were?

A. It was the next office, simply connected by a door.

Q. What did Pitkin do then?

A. He went in and shut the door.

Q. What happened then?

A. I don't know.

Q. Did you hear any noise?

A. Yes, sir; I heard some loud talk.

Q. How loud?

A. Well, I could not understand what words were exchanged between them; but they were talking loud.

Q. Could you distinguish their voices?

A. No, sir.

Q. How long did that continue?

A. I can't say; only a few minutes.

Q. What did Pitkin do after the conversation ceased?

A. He came out of the office and started right out of the door, and in a few seconds after I heard the shot.

Q. As Pitkin passed out of the door of Prescott's private office did you notice him?

A. No, sir.

Q. Did you observe anything with regard to him, as to how he looked?

140 A. I thought he looked strange when he first came in.

Q. Explain fully to the jury what you mean. Describe how he looked.

A. I thought he had a very peculiar look, a look I had never seen before.

Q. What sort of a look?

A. A wild look.

Q. What impression did he make upon you by his manner and conduct at the time?

(OBJ.—Defendant's counsel objected to the question as incompetent. The court overruled the objection, to which ruling defendant's counsel then and there duly excepted.)

A. I thought he was out of his head.

Cross-examination by Mr. CHANDLER:

Q. I understood you to say that when he first passed in you did not notice him particularly?

A. I had nothing to say to him.

Q. Nor he to you?

A. No, sir. He simply looked at me.

Q. Did he speak at all?
A. He said something, but I did not learn what it was.
Q. It was in an undertone?
A. Yes, sir.
Q. And you don't know whether it was a sensible or foolish remark?
A. No, sir.
Q. You don't know whether it was about business or what?
A. No, sir.

141 Q. He went into the office, came out, passed by you, and you didn't notice him?
A. I was not sitting so he would pass me. I saw him over my shoulder.
Q. Is it possible that you are willing to swear you thought he was out of his head on such evidence as that, simply seeing him over your shoulder and not talking to him?
A. Well, he acted so strange.
Q. How?
A. Well, it was his habit to say "Good morning," and have some conversation with us always.
Q. Was it from a failure to say "Good morning" that you thought he was out of his head?
A. Partly.
Q. You rest the opinion that you have given before the jury partly on the circumstance that he failed to say "Good morning"?
A. That had a good deal to do with it.
Q. Now, where does the other part rest?
A. From the way he acted.
Q. Well, how? You have described his actions, as I understand.
A. Yes, sir.
Q. What did he do?
A. Well, he muttered so I did not understand him.
Q. And that helped to form your belief?
A. Yes, sir.
Q. That was enough for you, because you did not understand him?
A. Yes, sir.

142 Q. The fact that he spoke so low that you did not understand him impressed you immediately that there was something wrong in his mind?
A. Yes, sir.
Q. Is there any other fact that entered into your opinion?
A. I don't know that there is.
Q. Do you know why Mr. Pitkin was not appointed to this office?
A. I do not.
Q. Do you know whether he was a dissipated man or not?
A. I do not. I have heard so.
Q. Don't you know that that is the reason why he was not appointed?
A. I can't say it was.
Q. Wasn't that the understanding all the time?
A. No, sir; I think he was incompetent to take the place?
Q. For what reason?
A. I can't say.

Q. Wasn't it you' understanding that he was dissipated, and for that reason they did not give him the appointment?

A. No, sir.

Q. You say you had heard that?

(OBJ.—Objected to.)

Q. Hadn't you been associated with Pitkin during business hours only?

A. Yes, sir.

143 Q. Now, after Mr. Pitkin passed out, with whatever strangeness there was in his manner, you did not take interest enough in him to get up and go to the door?

A. No, sir.

Q. Was there nobody inside of that office who took sufficient interest in him on the morning that he passed out of it, and just before he killed himself, to get up and go to the door and see what was the matter?

A. No, sir; not that I know of.

Q. How many persons were in the office?

A. I can't say exactly; four or five.

Q. We' they all acquaintances of Pitkin's?

A. Yes, sir.

Q. All clerks in the office?

A. Yes, sir.

Q. How long had they been serving with him?

A. About two years and a half.

Q. You didn't think there was really much the matter with him, did you?

A. Well, I thought——

Q. Now, let us be honest about this. Now, at that time, before the killing I mean, you didn't think there was really anything the matter with him?

A. Yes, sir; I thought so for some time before he killed himself.

Q. Why?

A. His work was imperfect and he was quite incompetent. I could not place any confidence in anything he did.

Q. When did that begin to occur?

144 A. I think about 6 or 8 months prior to his death.

Q. Did you have any supervision over his work?

A. No, sir.

Q. How do you undertake to say he was incompetent, then?

A. I was not over his work, but I had a great deal to do with his work.

Q. Did you have anything to do with speaking to Prescott about it?

A. No, sir; it was not a thing for me to do.

Q. Now, didn't you know, and didn't every other clerk in the office know, that this incompetency had resulted from this dissipation?

(OBJ.—Objected to.)

Q. (By the COURT.) Did you say he was dissipated?

A. No, sir; only what I had heard.

Q. (By Mr. CHANDLER.) You didn't associate with him evenings?

A. No, sir.

Q. You wasn't at the lodge with him?

A. No, sir.

Witness Charles J. Smith.

CHARLES J. SMITH, a witness called for the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. Mr. Smith, how long have you resided in Kansas City?

A. About 21 years.

Q. How long have you been connected with the Fort Scott road?

145 A. A little over seven years.

Q. What position do you now occupy?

A. Chief clerk in the auditor's office.

Q. Did you know Mr. Pitkin in his life-time?

A. Yes, sir.

Q. How long?

A. I have known of him for fifteen years, and I knew him personally, say, 10 years.

Q. Were you ever in the same office with him; and, if so, how long and in what office?

A. In the auditor's office of the Fort Scott road; well, about three years.

Q. The last three years of his life?

A. Yes, sir.

Q. Who else was in the immediate office with you?

A. Mr. Aldrich and Mr. Pitkin.

Q. Who was auditor of the road?

A. Mr. Prescott.

Q. Do you remember the fact that Mr. Prescott resigned in Aug., 1878?

A. Yes, sir.

Q. Who were applicants for the place made vacant?

A. I don't know personally of any applicants.

Q. What position did Mr. Pitkin occupy at the time Mr. Prescott resigned?

A. His title was assistant auditor.

Q. How long had he been such?

A. Since I had known him; otherwise I knew he had been there about 9 years.

Q. How long had you been in that particular office?

146 A. About three years.

Q. Who was appointed to the place made vacant?

A. The offices were divided, and Mr. Aldrich and myself had the places.

Q. Now, Mr. Smith, did you see Mr. Pitkin on the morning that he killed himself?

A. Yes, sir.

Q. About what time?

A. Near twelve o'clock.

Q. Where?

A. At the office.

Q. What occurred? State to the jury fully.

A. I came down late that morning—about half past eleven—and I was

sitting in the office when Mr. Pitkin came in. I was sitting with my back to him, and I heard him ask if Mr. Prescott was in, and some one answered yes, and he then walked into Mr. Prescott's room and slammed the door after him. I then heard some loud conversation, which lasted probably 5 minutes. He then came out, and Mr. Prescott followed very closely after him. He looked at me a moment or two, and then turned around and went outside of the door, and in a minute after I heard the report of a pistol, and exclaimed "Pitkin has shot himself," and we rushed out and found that he had.

Q. When he came out of Mr. Prescott's office what was the expression of his face and eyes?

A. He had an excited appearance; his face was white and red
147 in spots, showing congestion, and his general appearance as if he had had no sleep. He was labouring under intense excitement, and he had a wild look and manner like one who is not under the control of his reason.

Cross-examination by Mr. CHANDLER:

Q. How many people have you seen not under the control of their reason?

A. Well, to a greater or less degree, I have seen a great many.

Q. That is about as big as a lump of chalk. Will you tell us how many?

A. No, I can't.

Q. You have had no extraordinary care of insane people?

A. No, sir.

Q. Where did you see these insane people?

A. I didn't say anything about insanity.

Q. What do you call a man who is not under the control of his reason?

A. A man who is not under the control of his reason I call him a man who is not capable at the time of governing himself.

Q. Well, but what do you call that?

A. A man who has not control of himself by his own will.

Q. I understand the condition you discribe, but what do you call that condition; would you say he was sane or insane?

A. I would say he was under such violent excitement that he was unable to restrain himself, or that he was insane.

Q. Which?

148 A. As circumstances would be.

Q. That is very clear.

A. Well, I mean with greater or less violence. I have seen men who hadn't control of themselves that I didn't think were insane.

Q. You think that sometimes men do not have control of themselves are sane?

A. Yes, sir; as a general thing they are.

Q. That is only exceptional, then?

A. Yes, sir; they lose for a moment control of themselves, but I do not consider that an absolute case of insanity.

Q. You would call that a qualified case of insanity?

A. Yes, sir.

Q. Insane pro tanto—so much?

A. Yes, sir.

Q. To what extent do you think Pitkin was in that condition?

A. I can't say.

Q. To what degree would you say that these ills had taken possession of him?

A. Well, I don't know that I can qualify it exactly.

Q. Well, you have undertaken to tell the jury just how these cases are, and I would like to know your opinion?

A. I am not giving an opinion.

Q. You are giving in your opinion as to the condition of his mind, and I want that opinion in full, so that I may understand it if I can.

A. Well, I should say from his condition and from his actions at the time I saw him I considered that his mind was disordered to a cer-

149 tain , but as regards that extent, I can only judge from what followed. I didn't give it that attention at the time to be able to state just what impression it made.

Q. You didn't make a diagnosis of it?

A. No, sir.

Q. You were taking a retrospective view of it, as it were?

A. Yes, sir.

Q. You have great kind-sight; you can see an event after it has transpired with great vividness?

A. I will try.

Q. And it is by this great vividness that you discovered that this man was insane?

A. No, all the way through I have not said any thing about insanity. The only time I saw him was just a moment as he passed as he came out of the door, and his appearance struck me as being disordered, and I didn't stop long enough to make up my mind as to whether the man was insane or not.

Q. So if you didn't stop long enough to make up your mind, you didn't make it up?

A. Only on the momentary consideration.

Q. Well, didn't you state a moment ago that you hadn't made up your mind?

A. No, sir.

Q. Well, do you state now that you had made up your mind?

A. I allowed the impression to have the weight the moment gave it.

Q. How was it?

150 A. Just as you look at it.

Q. Didn't you state a moment ago that you didn't have an impression at the time, but formed it from what followed afterward?

A. No, sir.

Q. Now, I suppose you have no opinion that a man is insane because he kills himself?

A. Not necessarily.

Q. What effect did that circumstance have on your mind at the time in determining whether he was sane or insane?

A. Well, it would have great weight.

Q. Well, if it is possible for a man to kill himself while he is still sane, the fact that he was a little disordered and confused just previous to the act

would not be at all surprising; it would be rather consistent with the act of suicide. You wouldn't expect a man to be very much composed just previous to killing himself?

A. Well, that's owing to circumstances. I could think of a man doing that with as much calmness as with violence if he would do it just as easy as anything.

Q. It would depend then, you think, upon a man's temperament.

A. Yes, sir.

Q. If a man is cool, calm, and deliberate he could cut his own throat with as much nonchalance as he could anybody's else.

A. Yes, sir.

151 Q. Well, Mr. Pitkin was a man of fine temperament, was he not?

A. Well, I rather thought he was of a phlegmatic temperament.

Q. And that is what surprised you at his being excited previous to killing himself?

A. Yes, sir.

Q. But if he had been of an excitable temperament and had gone and killed himself you would have thought nothing of it; you would have attributed that to his disposition?

A. Probably, partly.

Q. There was just enough excitement in this case to attribute part of the result to an excitable temperament, do you think?

A. I can't say.

Q. How did that strike you?

A. It might; I don't know. I don't know that I have an opinion one way or the other; there is too fine a distinction.

Q. You really, then, haven't an opinion on the subject?

A. No, sir.

Witness C. H. Prescott.

C. H. PRESCOTT, a witness called on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. LATHROP:

Q. How long have you lived in Kansas City?

A. A little over ten years.

Q. What position do you now occupy?

A. I am engaged with Armour Bros., bankers.

Q. In what capacity?

152 A. Cashier.

Q. What position did you hold immediately prior?

A. I was connected with the Missouri River, Fort Scott and Gulf R. R., as auditor and cashier.

Q. How long?

A. Nine years.

Q. Who was treasurer of the company at that time?

A. Charles Merriam, of Boston.

Q. What relation did you bear to him as an officer of the company?

(OBJ.—Mr. CHANDLER. What relevancy has all this?)

Q. What relation did the treasurer bear to you as an officer?

A. Well, he didn't appoint me, but he would have had the appointing of my successor.

Q. Did you know Mr. Pitkin?

A. Yes, sir.

Q. How long?

A. Nine years.

Q. During that time what capacity did he serve?

A. As my assistant.

Q. During the last two or three years of his life who else was in the immediate office in which he work'?

A. C. J. Smith, Mr. Aldrich, and a portion of the time other clerks.

Q. What time did you resign as auditor & cashier?

A. Some time in September, possibly in August.

Q. Who were applicants for the place made vacant?

A. The only applicant that I knew of was Mr. Pitkin.

Q. To whom did he apply?

153 A. To Mr. Merriam.

Q. What conversation did you have with him during this time as to whether or not he would receive the appointment from Mr. Merriam?

A. I did not encourage it.

Q. What conversation did you have with regard to it?

A. I don't remember any particular conversation, but I thought he was hardly responsible enough.

Q. How was it with Mr. Pitkin himself as to his hope of getting the office through Mr. Merriam, and as expressed to you by him?

(OBJ.—Defendant's counsel objected to the question as incompetent. The court overruled the objection, to which ruling of the court defendant's counsel then and there duly excepted.)

A. Mr. Pitkin thought——

(OBJ.—Objected to.)

Q. State what was said.

A. I remember no conversation in particular.

Q. Did Mr. Pitkin state to you—I will call your attention to this one fact with reference to his having received assurance from Mr. Merriam in regard to the appointment——

A. I should like to answer that in my own way and in a little roundabout style.

Mr. CHANDLER. Well, we object to the roundabout style. Give us the conversation.

WITNESS. Well, I don't know the exact words; but he gave me to understand that he felt encouraged, and that Mr. Merriam had intimated to him that he would have the place.

Q. What did you say in response to that, if anything?

(OBJ.—Objected to by defendant's counsel as incompetent.)

154 The court overruled the objection, to which ruling of the court defendant's counsel then and there duly excepted.)

A. I told him I hoped that he would get it if it was right that he should have it.

Q. What was the result; who was appointed?

A. There was no appointment other than temporary, but acting officers were appointed until another could be made.

Q. Who were appointed acting officers?

A. Mr. Smith was appointed acting auditor & Mr. Aldrich acting cashier.

Q. When was that conclusion arrived at as compared with the Sunday on which Pitkin killed himself?

A. I hardly know. I didn't give the place much attention for the few weeks before I left, as I was busy in the bank. I had nothing to do with selecting or recom'ending any one.

Q. Was it one or two days before he killed himself he was informed by Mr. Nettleton of the result?

A. A short time; I should think it was not over two days.

Q. To what desk was Mr. Pitkin assigned?

A. Well, I don't think I saw that letter. I think I only know from hearsay.

Q. Do you know as a matter of fact to what desk he was assigned?

A. I think there is no doubt it was Mr. Smith's desk.

Q. Don't you know that as a fact?

A. I think I can assert it as a fact.

155 Q. Now in the position as assistant auditor, what salary been receiving during the time he had been with you?

A. Well, my impression was that it was $166.00 per month.

Q. What was the salary attached to Smith's desk?

A. I am not positive; $125.00 a month, I think.

Q. Now, sir, after this announcement was made of the appointment of Smith and Aldrich and Mr. Pitkin's assignment to Mr. Smith's desk, did you see Pitkin on the Sunday morning on which he killed himself?

A. Yes, sir.

Q. About what time?

A. Shortly before noon.

Q. Where were you at the time?

A. In my office.

Q. Where was your office as related to the office in which Pitkin, Smith, and Aldrich had their desk?

A. One room west.

Q. Who was in the outer office, that is Smith's office, at the time that Pitkin came in?

A. Mr. Smith and Mr. Aldrich. I think no one else.

Q. Were you sitting or standing as Pitkin came into your room?

A. My impression is that the door was shut and that I was sitting, and when the door was opened I stood up.

Q. Now please go forward. First, who opened the door?

A. Mr. Pitkin.

156 Q. Now go forward in your own way and tell the jury the whole transaction from beginning to end, and state what happened just as it occurred.

A. Mr. Pitkin came in and shut the door & said to me that I was the cause of bringing starvation to his family. I reasoned, I suppose, a little with him. I hardly remember. I was a little nervous myself.

Q. Why? What induced your nervousness?

(OBJ.—Mr. CHANDLER. We object. Let him state what the other party said.)

The COURT. State the whole transaction.

WITNESS. I reasoned with him for a short time, and for the 9 years that I had known him he had always been very gentlemanly, and had never spoken a harsh word to me.

(OBJ.—Objected to by defendant's counsel as incompetent and immaterial.

The COURT. I think it is entirely proper.

To this ruling of the court defendant's counsel then and there duly excepted.)

Q. Go on.

A. On this morning he was somewhat violent. I had never seen him look as he did that morning, and it made me apprehensive of danger, so much so that I stood right up and tried to reason with him; but reasoning was out of the question, and he said (of course I cannot remember all the conversation), but he said, "It makes no difference now; I shall be a dead man before I leave the building, and you ought to be." When he
157 said that, and from his strange appearance I thought he had taken some poisonous substance that would kill him, & I really expected it for the moment, he looked so terribly shocking. As soon as I got an opportunity I went by him and opened the door, and the moment I did that he rushed out and before I had a chance to speak to any one the shot was fired. We rushed out then and he was dead on the floor.

Q. Now state particularly to the jury what his appearance was, how he looked.

A. Well, he looked just as I suppose a crazy man would look; I don't remember ever seeing a crazy man; but if you should ask me about it I would say he looked just as I suppose a crazy man would look.

(OBJ.—Objected to by defendant's counsel as incompetent; objections overruled.

To this ruling of the court defendant's counsel then and there duly excepted.)

Q. Go on.

A. Well, I am not acquainted with crazy people; I am only giving you my idea.

Q. How was his countenance, his cheeks & face?

A. Well, I have unfortunately a disease of the eyes, and I cannot give you the expression of his countenance other than it was changed from the natural way; there was a decided change.

Q. How were his eyes?

A. They looked entirely unnatural. I could not tell you what they looked like; they looked like cat's-eyes—glaring.

158 Q. What peculiar position did he assume, if any?

A. His hands were held in that way [illustrating]; I remember that particularly, because I thought he was going to jump at me, and it went through my mind that if he did jump I should jump first, as he was a much stronger man than myself. I didn't dare show him that I was the least bit timid, and I don't think I did; but I was for all that.

Cross-examination by Mr. CHANDLER:

Q. You were considerably excited, then?

A. I don't think I demonstrated it, but I have no doubt I was.

Q. And you could not see very well, and you say your eyes are defective?

A. Well, I am what they call "color blind"; I can't see distinct enough, and I can't describe what I see always.

Q. Well, that is not attributable to the eyes, is it?

A. Well, it may be some disarrangement about the eyes?

Q. So you can't rely upon your description of this occurrence?

A. Well, I don't want to rely on it again myself.

Q. You were pretty badly scared, wasn't you?

A. I think I was. I was scared more afterwards than I was at the time.

Q. Everything looked very exag'erated?

A. Well, I don't think there is much exag'eration; I don't think I have exag'erated.

Q. No; but I say things appeared that *a* way?

A. Yes, sir.

159 Q. How long did the interview last?

A. A few moments.

Q. Five?

A. No; not over two or three.

Q. What was Pitkin talking to you about?

A. That was the principal part of the conversation.

Q. But you have not stated what it was.

A. Yes, sir; I said, he said that I was the cause of his bringing his family to starvation.

Q. In what way; did he explain?

A. Yes, sir; he said I was the cause of his not getting the situation.

Q. Now, I will ask you if while he was with you he talked about nothing else but this actual occurrence to him?

A. No, sir.

Q. That seemed to be the sole subject in his mind?

A. Yes, sir.

Q. He expressed disappointment in not getting the place?

A. No, sir; he appeared to vent his vengeance on me for preventing his getting the place, as he thought.

Q. He spoke to you in reference to his not getting the place, and he didn't make any other statement or assign any other cause for his dislike to you?

A. No, sir.

Q. That was the sole subject of his conversation with you?

A. Yes, sir.

160 Q. Did *him* seem to reason from cause to effect, like ordinary people?

A. Well, it was very rapid, and my recollection is that there wasn't much reason about him.

Q. Well, he complained that you didn't get this place for him, and that you had caused the starvation of his family?

A. Yes, sir.

Q. And that was the cause of his animosity to you, so far as he expressed it?

A. Yes, sir.

Q. Whatever threats he made there to you, actual or implied by you, came from his sense of injury, because he thought you had prevented his getting this place.

A. As far as I know.

Q. He talked like a man who was excited on that subject and had an interest in it?

A. Yes, sir.

Q. He didn't talk about anything except what had an actual existence?

A. Yes; I knew I hadn't prevented his getting the place.

Q. Well, you have no doubt but what he thought you had?

A. Not the slightest.

Q. You haven't the slightest doubt but what he believed when he entered your place that you had done something about it?

A. I sup'ose so.

Q. You had told him you would like it if he did get it?.

161 A. Yes, sir; but I was honest with him; I told him I didn't think he would get it.

Q. Well, he thought you was his friend and would assist him?

A. No, sir.

Q. Well, wouldn't you think so from such an assertion.

A. Yes, sir; but when you add on the provision that you don't think he could get it, it changes it. I didn't say that I would help him on to that end, but I told him if he should be so fortunate as to get it, as for myself personally, I should be glad, for I liked him very much, and always did, and that *he had* been the man he was before this time I thought he would be my successor.

Q. Did you tell him that?

A. I think I did.

Q. When?

A. A few weeks before this took place.

Q. How long after you told him that was it he said he had heard from Mr. Merriam?

A. Shortly after.

Q. He expected then to get it?

A. Yes, sir.

Q. Do you know whether he was dissipated?

A. Well, in former years, ten years ago, I think, he had got on little sprees, and I didn't know it; but I suspected it from his being at home sick, but I didn't think it was from this.

Q. Mr. Prescott, don't you know that at the time he was apply-

162 ing for this place he was a dissipated man, and that was the reason he didn't get it?

A. I thought 6 months before that his difficulties were caused by dissipation; and I spoke to him about it, but he said to me it was not, and satisfied me it was not, and he complained to me of a feeling he could not describe, and he did deteriorate in his work and there was a failing there for six months, and I satisfied myself that it was not liquor, or I would have discharged him. I kept him all that time when it was in my power to discharge him.

Q. Why did you think it was liquor, and why did you speak to him?

A. Well, he didn't appear to be intoxicated, but these failings attracted my attention, and I was afraid he had been drinking of nights, and that this was the effect in the daytime, and that kind of mystified me.

Q. Well, whatever it was, you thought at the time it was such results as would come from drinking liquor at night.

A. Yes, sir; and I spoke to him about it.

Q. If the actual fact is that he drank at night, and continued to drink, you were probably right in your conjecture.

A. Possibly.

Q. Now, it was on account of this growing incompetency to transact the business that he didn't get this place?

A. Well, I was in Boston a short time before I took the posi-
163 tion I now occupy, and while there I had a conversation with Mr. Merriam, who told me that Mr. Pitkin had written to him applying for the situation. I told him that he and Mr. Nettleton and Major Henning, who was superintendent of the road and knew all about Mr. Pitkin, his qualifications, &c., and that I had nothing to say one way or the other; they were all friends of mine in the office, and I would have liked to see them all get along.

Q. Well, you haven't really answered my question whether you know that is the case.

A. No, sir; I don't know it; I had nothing to do with appointing my successor at all.

Q. Now, you have described Mr. Pitkin's look as being like what you suppose a crazy man's look would be, though you have never seen a crazy man, you say.

A. I don't know how a crazy man may have looked.

Q. Well, how do you raise up the image before you of a crazy man's face, the counterpart of which you have never seen?

A. Simply from the reason that I had never seen him look that way during the whole time that I had known him.

Q. But I want to know your mind operates in that sort of way so as to improvise a crazy face, the counterpart of which you have never seen, and then compare Pitkin's with it.

A. Well, I took his face in the light of his actions.

Q. His actions?

A. Certainly.

Q. What were they?

164 A. It seemed to me something out of the regular order of things.

Q. Isn't the picture a little stretched?

A. I don't think so.

Q. Now, you say you imagine how a crazy man would look, and you have fortified that image with a crazy face, well defined; what is it?

A. Well, just as Pitkin looked.

Q. But we don't see that.

A. Well, my power of description is not good.

Q. You have already set up the ideal of a crazy face. It seems to me that your power as description is pretty good, if you can bring that up in the mind and make it a standard of comparison. Now, what looks do you assign to a person whom you suppose to be crazy?

A. Well, I don't know the medical terms.

Q. Well, we will take the every-day terms.

A. Well, I should say that if a man accustomed to cheerfulness and geniality became violent in his actions and his looks change, there is something the matter with him; he is not the same. But I am guessing that he is crazy; I don't know that he is.

Q. We have had the good fortune not to be crazy, and you have given us what you consider a crazy face, and then you have said that this man looked like what you supposed the crazy face to be. Now, if you will give us the chief features of a crazy man's face, or something by which we can trace this resemblance which you think exists between one
165 man's face that you did see and another man's face that you never saw, I will be obliged to you.

A. I will have to fall back on that face; I can't describe it.

Q. Do you have nothing to say about how Pitkin did look?

A. Nothing more.

Q. You can't tell the jury in any satisfactory way why they cannot see that look as well as you did?

A. No, sir; I don't think any one could unless they had been there.

Q. Did Mr. Pitkin have any weapon then?

A. No, sir; I didn't see any.

Q. He had open hands?

A. Yes, sir.

Q. He said he would kill himself?

A. No, sir; he said he would be a dead man.

Q. Did he say in what time?

A. Yes, sir; before he left the building.

Q. He passed out of the office and *u*nto the hall and shot himself?

A. Yes, sir.

Q. Did you go out of your own private office into the main office?

A. Yes, sir; I went through, but he fired the shot before I got to the hall.

Q. Where did you go?

A. I stood on the threshold of the door as he passed me and passed out, and I didn't move till I heard the click of the pistol, which was a very short time—as quick as he could go there—and just the instant
166 that the pistol went off I stepped out. Both Smith and Aldrich were in the office at the time, but there was no time to make any remarks.

Q. Then, the fact is that you didn't make any?

A. No, sir.

Q. You said nothing in the mean time, and you did nothing in the mean time?

A. No, sir.

Q. Mr. Prescott, on your hypothesis here that he looked like a crazy man, I will ask you if you have an idea that a man who kills himself is necessarily crazy?

A. Yes, sir.

Q. You think so?

A. Yes, sir.

Q. So that after he killed himself you looked at his conduct in the light

of that fact, and you became thoroughly impressed with the idea that he was crazy?

A. I was thoroughly impressed that there was something the matter with him when he was in the room. I don't know whether you call it crazy or not.

Q. But you say if a man kills himself he is necessarily crazy?

A. Yes, sir; but that is only my opinion.

Q. Well, I want to see whether you made up your mind from his appearance before he shot himself or from that fact itself?

A. I thought so before; but if he hadn't been in the room at all I would have thought he was insane from the fact that he killed himself.

167 Q. That is the chief fact that impressed itsself upon your mind?

A. No, not with reference to him at all, but on general principals. I don't think any man is sane who kills himself.

And this was all the evidence offered on the part of the plaintiff.

Whereupon the defendant moved the court to instruct the jury that upon the pleading and evidence in this case the plaintiff could not recover. But the court refused to so instruct the jury, and overruled defendant's motion to so instruct, to which ruling of the court in overruling said motion and refusing said instructions and charge the jury defendant at the time excepted.

The defendant's counsel to sustain the issue on their part then offered evidence as follows:

Witness M. D. Trefren.

M. D. TREFREN, being duly sworn, testified as follows:

Direct examination by Mr. CHANDLER:

Q. Where do you reside?

A. Kansas City.

Q. How long have you lived here?

A. Since March, 1858.

Q. Did you know George E. Pitkin in his life-time?

A. I did.

Q. When did you first become acquainted with him?

168 A. I think about May or June, 1858; soon after I came here.

Q. What was he doing then?

A. He was clerking in his brother's hardware store.

Q. Do you know anything about his habits as to temperance or intemperance?

A. At that time?

Q. Yes.

A. He was in the habit of getting on sprees occasionally from the time I first knew him.

Q. When did you first know him, and under what circumstances and to what extent did he get on sprees?

A. Well, he was employed by his brother, and I was in the habit of seeing George and his brother, S. B. Pitkin, almost daily. Sometimes George would send for me, and sometimes Pitkin himself came in. Very frequently I supposed George was on a spree when George came around the office.

(OBJ.—Obj. to.)

The COURT. Don't give your suppositions, but your knowledge on the subject.

Q. If you do know of his going on a spree at any time, state the circumstances.

A. I never saw him drink a glass of liquor in '58.

Q. Well, do you know from what he told you?

A. No, sir.

Q. Do you know of any other or subsequent time?

A. Well, in the fall of '58, after his brother died. I think he died in the fall of '58, and I went to N. Y. in the spring and met George
169 by appointment in matters connected with his brother's estate. I met him at the Metropolitan Hotel in New York, and saw him there drink what he called old Otard brandy.

Q. State what his condition was as to intemperance; whether he became intoxicated there; describe the case just as it was.

A. Well, I went to the hotel and called for Pitkin, and they showed me up to his room, and he and his wife were in the room. I had never seen his wife before that time. I found him in the room in rather an awkward position. He introduced me to his wife and got up and left the room, saying he would be back in a moment; he locked the door on the outside and took the key with him, leaving me in the room with his wife. I rang the bell and in a few moments afterwards a servant came and unlocked the door. I went down to the bar and found him at the hotel saloon with a tumbler of some kind of liquor which he said was Otard brandy, and that is the time that I saw him drink liquor. He asked me to join him. The next day he seemed to be perfectly straight, and the day afterwards he kept so, and from that time on, so far as my knowledge extends, until he and I left New York.

Q. State what he told you; whether he had been on a spree or not.

A. He told me he had got on a spree coming from Philadelphia and hadn't gotten over it yet.

Q. Well, from his appearance from the time you saw him there was he under the influence of liquor?

170 A. I think so.

Q. He told you that he got on a spree coming thro' Philadelphia?

A. Yes, sir.

Q. Do you know anything of his drinking after that?

A. Yes, sir.

Q. State the circumstances under which it occurred.

A. I know he was in the habit of drinking from that time on as long as I knew him, and up to 1861 or 1862, and then I lost track of him. I only know from hearsay what became of him after that.

Q. State any other circum-tances that you know of.

A. He came back here in 1858 from that trip to N. Y., and I employed him as clerk. The first employment I gave him was employment in Kansas, collections there on sales in the hardware business, in which he had been connected. I sent him out on about a three days' trip, and he was gone 7 or 8 days, an I I heard nothing from and I started Mr. Brooklyn after him. I gave him money enough to pay expenses when he started. He

had made some collections and reported them fully and fairly when he came back; he had not used any of the money collected, but had expended all the money I gave him for expenses, and when I asked him why he had been gone so long, he said that he had got to Olathe and met some friends there, and they played euchre, whist, and whiskey po/ker, and he
171 got on a spree and did not think it prudent to continue the business of collecting; he was afraid he might loose his money. He was straight when he came back, and all I know about his being on a spree was what he told. That was December, 1858, or January, 1859. He came back then and promised to do well, and I put him in the store as manager, but I was not in the store then and do not know about his habits; but so far as I know he conducted himself perfectly straight. Conducted the business as well as it could have been done by any one in the world, until, perhaps in the fall of 1859, or along in the spring of 1859, or the summer of 1859, I sent him to St. Louis to buy goods and gave him the money; I don't know the amount, but I desired him to pay certain parties in St. Louis, and I gave him the money to pay for goods that we had to pay cash for, such as lead, rubber, and leather belting. He went down on a boat, and after he had got to St. Louis and had been there some few days I heard from Mr. Barnum, who kept the hotel on Olive st., in St. Louis, and with whom I was acquainted, that Pitkin was there drinking.

(OBJ.—Obj. to.)

WITNESS. I went to St. Louis myself then and found him there, and he was entirely sober when I got there—perfectly straight. I found the money I had sent with him all safe in the safe at Barnum's Hotel,
172 precisely the packages I gave him; he had only used the money I gave him for traveling expenses, and that is all. I asked him why he had not purchased the goods; he said that on the boat coming down it was so slow that he got in with a party and got to playing cards, and at first he had concluded he wouldn't drink at all, but finally took a drink of cider, and next whiskey cocktails, and finally got drunk, and he hadn't got over it until he got down to St. Louis. That is about all I know of that.

Q. Did you tell him what you had heard from Mr. Barnum?

A. I don't think I did.

Q. Well, is that all?

A. Yes, sir, except what would not be evidence.

Q. Do you know of any other instance?

A. Well, in the fall of '59 I went to New York again, and he went with me, or rather we separated at St. Louis, and he went by the way of Cincinnati, Wheeling, Pittsburg to Philadelphia and New York, and I went around by Chicago and met him in New York, according to appointment.

Q. Well, do you know anything about his getting drunk on that occasion?

A. He was drunk when I met him in New York.

Q. Well, did he state anything about how long he had been in that condition?

A. Well, I think he said then that he had been drunk 3 or 4 days. He seemed disappointed that I had not met him according to appointment. I was 3 or 4 days behind time.

Q. Do you know of any instance since that time?

173 A. I do not remember now, without my attention is called to it. I know the fact that he had been in the habit of drinking more or less to excess ever since I first knew him.

Q. You knew him from '58 to '62?

A. Yes, sir.

Q. You say that you know that he was in the habit of drinking to excess during that time?

A. He was up to the time I lost sight of him.

Q. You cannot say how it was after that?

A. Well, my first knowledge of him after that was some time after the war, and at the time he was connected with the bridge company in some capacity. Then afterwards I knew him when he was in the railroad office, but I have not been very familiar with him since the war, though we were members of the same chapter.

Q. Do you know any of his habits after coming from the lodge or chapter?

A. I know he was in the habit frequently, no, not frequently, but I know of 2 or 3 occasions when he took a drink, but never, to my knowledge, to excess.

Cross-examination by Mr. BLACK:

Q. Mr. Trefren, when did you commence the hardware business?

A. It was either in the last of September or first of October, 1858.

Q. You were practicing law at the time?

A. Yes, sir.

Q. Did you attend to the law business, too?

174 A. Yes, sir. I didn't attend to the hardware business at all?

Q. Who did?

A. Mr. Pitkin.

Q. How long were you in the hardware business?

A. A year or two.

Q. Who had charge of it during that time?

A. Mr. Pitkin.

Q. Did you consider him competent to attend to it?

A. I thought him one of the most competent men I ever saw, except at these periodical times, and they were very rare.

Q. He had been in that same business prior to the time that he had been employed by you?

A. Yes, sir.

Q. What was the style of the firm?

A. S. B. Pitkin & Brother.

Q. Was George a member of the firm?

A. I don't know whether he was or not. I think now the style was S. B. Pitkin & Co.

Q. How did that business come over to you?

A. I was the administrator of the estate.

Q. What did you and Pitkin go to New York for?

A. To make arrangements with a number of the creditors, and I went to New York to make a sale of the property; the stock of goods.

Q. I thought you said you went on to do business there, having him employed.

A. That is another time.
Q. The first time you went was to arrange with the creditors?
A. Yes, sir.
Q. Afterwards you had him employed to assist you?
175 A. After I came back from New York I had made an arrangement with the creditors by which they had made a sale to me for he appraised value.
Q. Then you ran the business after that?
A. Yes, sir.
Q. You say that when you first went there you went to talk to the creditors.
A. Yss, sir.
Q. You had been appointed administrator?
A. Yes, sir.
Q. What did George have to do with it at that time?
A. He had nothing really to do with the estate.
Q. How did he come to go there?
A. I sent him.
Q. Who paid his expenses?
A. I did.
Q. Was he there on your business?
A. He was there on the business of his brother and himself, at least he claimed that he was interested with his brother and could make an arrangement with the creditors that would be better.
Q. Well, was he in fact interested; did you as administrator settle with him as partner?
A. No, sir.
Q. Then he had no interest in the firm?
A. Well, if he had I did not know it.
Q. How long were you there at that time?
A. I think about two or three weeks.
Q. You say he took you up to his room, introduced you to his
176 wife and left, locking you up in the room with her, and did not return.
A. Well, I should have said there, that I had my daughter with me.
Q. How old was she?
A. About 7 or 8 years old.
Q. You did not state that before?
A. No, sir.
Q. Well, then you came back home?
A. Yes, sir.
Q. And then you put him in the store?
A. No, not at once.
Q. What did you do at first?
A. I sent him to the country; that was the first service.
Q. Collecting?
A. Yes, sir.
Q. The collections he made were all right?
A. Yes, sir.
Q. But he said he had got to Olathe and got to drinking there?
A. He told me that.

Q. How long was he gone?
A. I think 7 or 8 days.
Q. Where did he make the collections?
A. At Shawnee and two or three little places around there.
Q. Anyhow, what he had collected was properly accounted for?
A. Yes, sir; he collected all the bills I gave him to collect.
Q. You say he drank some; did you ever drink with him?
177 A. I do not remember of taking but one drink with him in my life.
Q. Where was that?
A. I believe that was at Gaston's, either Gaston's or Strein's. It was after Gaston opened a saloon on this street.
Q. During all the time he was in your employ, you regarded him as honest and capable, and the very best kind of a man for the place?
A. There was just these few exceptions when he said he had been drinking too much.
Q. That's all there is of it?
A. That's what he said.
Q. Since 1862 you don't know anything about him?
A. I met him frequently.
Q. Well, all that time you know he has been employed and held very responsible positions?
A. Yes, sir.
Q. And that he held this place continuously?
A. I know, as a fact, that he was employed in the Fort Scott Railroad office.
Q. How long?
A. Several years. I frequently had business over there in Mr. Pratt's office, and met him there.
Q. What time was this that you say he was in St. Louis?
A. In the spring of 1859.
Q. At that time he made some purchases of goods for you?
A. Yes, sir.
Q. Now, you commenced in 1858 selling goods?
A. Yes, sir.
178 Q. How long did you continue?
A. Until the fall of 1860.
Q. How long did he remain there?
A. He was with me the whole time and stayed in the store after I left, I sold the goods to Norton and Thorp, and he went with them.
Q. Do you recollect when that was?
A. Some time in 1860.
Q. How long did he remain with them?
A. Until they sold to Cooper and somebody.
Q. When?
A. About 1861 or 1862.
Q. Where did George go then?
A. I don't know only from hearsay.
Q. Did he have charge of the store for Norton and Thorp?
A. Yes, sir.
Q. Up to the time they quit?

A. Yes, sir.

Q. Then he was continuously in charge of that stock of goods from the time you bought until Cooper got it?

A. Yes, sir; down to the time I last knew the goods. That is from the spring of 1858 down to the time that Cooper sold to somebody else. I don't know who.

Q. During that time you actually saw him take but one drink of brandy?

A. I think so.

Q. Do you remember whether that was whiskey, brandy, or beer?

179 A. I know he said it was Otard brandy. That is all I know about it.

Q. How long ago is that?

A. It was in 1858.

Q. You were with him a great deal?

A. Yes, sir.

Q. About the store and elsewhere?

A. Yes, sir; almost daily.

Witness H. P. White.

H. P. WHITE, a witness called on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. CHANDLER:

Q. How long have you lived in Kansas City?

A. About 14 years.

Q. Did you know George E. Pitkin in his life-time?

A. Yes, sir.

Q. How long previous to his death did you know him?

A. I became acquainted with him personally in 1869, I think. I may have met him before that; I do not remember definitely.

Q. Did your acquaintance continue for a great length of time?

A. From 1869 up.

Q. How intimately did you know him?

A. Quite intimately.

Q. Do you know anything about his habits?

A. I think I do.

Q. Do you know anything about his using liquor?

A. Do you want my opinion?

180 Q. No, sir; what you know.

A. Well, sir, he did sometimes use liquor.

Q. To what extent?

A. Moderately generally.

Q. Well, exceptionally how was it?

A. Well, I know of but one exception.

Q. When was that?

A. My recollection is that it was late in the fall or early in the spring of 1873.

Q. State what occurred then.

A. Well, I had been out of town. I cannot state what occurred without stating what I heard. I returned late in the evening and some gen-

tlemen told me that Mr. Pitkin was on a spree; I think that was the expression. I made inquiries and I found him and took charge of him.

Q. Where did you find him?

A. It would be difficult to tell.

Q. What did you do with him?

A. Well, I took him to my room and kept him till morning.

Q. What was his condition?

A. Well, he was under the influence of liquor. I don't know that I could state definately his condition. He had been drinking some, and I was afraid to trust him out by himself for fear he would indulge further. He was in that condition, but was able to walk, had his senses, and I think knew his condition. He also agreed with me that I shouldtake charge of him.

Q. What was your object in taking charge of him?

181 A. To keep him from getting drunk and doing worse than he had done.

Q. Did you consider him drunk at the time?

A. Well, he was not in the gutter, was not down; but he was intoxicated.

Q. To such an extent that you thought he was not able to take care of himself?

A. Well, I thought it was not safe to trust him to go home by himself.

Q. Do you know how long he was on that spree?

A. I do not.

Q. Did he refer to it; did he tell you?

A. He may have referred to it; I do not remember.

Q. That was in 1873?

A. I would say that; but I may be mistaken.

Q. Well, did you see him afterwards?

A. Yes, sir.

Q. Do you know whether he drank to excess afterwards?

A. I do not.

Q. What was his appearance?

A. At what time?

Q. Well, continuously; can you tell a man who is in the habit of drinking liquor?

A. I don't know that I can positively; but my acquaintance with him was of such a character, and my meetings with him so frequent, and at each meeting there was business relations between us, and I think I should have discovered the habit in him if it existed; but I never discovered any evidence of drinking in the man from that time on, only as I have

182 seen him take a glass of wine. I don't know that I ought to say that either; I may have gathered that from the testimony here today. I have seen him drink beer, I know.

Q. Were you with him at night?

A. Yes, sir.

Q. Did you belong to any orders that he did?

A. Yes, sir; the Masonic order.

Q. Did you meet monthly?

A. Yes, sir; there were three bodies, and each body met monthly—no, twice a month.

Q. I suppose on those occasions you did not go with him?

A. Well, we generally walked along together a portion of the way. I had a room at the court-house while I was a bachelor, and then went that way, and he usually came down that way to Fifth street, and went from there up Broadway.

Cross-examination by Mr. BLACK:

Q. When did you first become acquainted with Mr. Pitkin?

A. Well, I do not remember meeting Pitkin till December, 1869, and our acquaintance became intimate at once. Then we were thrown together constantly.

Q. Did that intimacy keep up till his death?

A. Yes, sir; until May or April preceding his death.

Q. Now, you spoke of meeting him frequently at night at the lodge. Give the jury some definite idea how often you met him.

A. Well, there were three organizations, one of which met on the first and third Thursdays and one on the second and fourth Thursdays.
183 I think for five or six years he was a regular attendant upon the order that met on the second and fourth Thursdays, and I usually met him at all these.

Q. What was his habit as to attending these meetings?

A. Very regular.

Q. It would average more than once a week?

A. Yes, sir; twice a week. Then I met him frequently outside of that.

Q. You spoke of certain business relations; what were they?

A. What I meant by that was that for six years I was president of a body and he was secretary, and there was that relation between us. He was very earnest in whatever matter of that kind he took hold of, and attended to it with accuracy and dispatch.

Q. Now, during all this time of your acquaintance with him that is the only time you ever knew him to get on a spree?

A. Yes, sir; or ever heard anything of it.

Q. He was at these meetings always competent to transact his business?

A. Yes, sir.

Q. And faithful in his attendance?

A. Yes, sir.

Q. I understand you to say you regarded his habits as temperate?

A. Yes, sir.

Re-examination by Mr. CHANDLER:

Q. How recently before his death did you see him?

A. Well, I cannot fix the date with accuracy. It was either late
184 in April or early in May. I had met him on the street frequently, but had no conversation with him.

Q. All summer, then, you had not seen him to converse with him?

A. No, sir.

Q. At the time you last saw him do you know whether he was a man of sound mind or not?

A. No, sir.

Q. Did you see any symptoms of insanity?

A. No, sir; I don't know that I did. I can state this, however: I had noticed for several months prior to that as one witness expressed it this morn-

ing, an absentmindedness. When I met Pitkin along in the summer there was a startled look about him, and he would say, "How are you?" and pass on. This, though, was in the summer, as we met on the street, and I was always in a hurry and he was in a hurry.

Q. Well, you never spoke of it as something strange or peculiar. It made no such impression on your mind?

A. Yes, sir; I did.

Q. To whom?

A. To Judge Cowan.

Q. What did you say?

A. Well, I knew Judge Cowan was an acquaintance of his, and I inquired if he had noticed anything about the man.

Q. Well, didn't you speak of that with reference to the reports of his dissipation?

A. I had never heard of his dissipation until after his death.

185 Recross-examination by Mr. BLACK:

Q. How long did these meetings of the lodge last?

A. They varied from nine o'clock till midnight. It was very rare, however, for them to last that long. The average time of closing would be probably half past ten.

Witness Geo. Rick.

GEORGE RICK, a witness called for the defendant, being duly sworn, estified as follows:

Direct examination by Mr. CHANDLER:

Q. How long have you resided in Kansas City?

A. Ten years.

Q. Did you know George E. Pitkin in his life-time?

A. Yes, sir.

Q. How long?

A. About four years.

Q. What was you' business?

A. Tending bar.

Q. At what place?

A. At Eichenauer's.

Q. Do you know anything about Pitkin's coming there occasionally?

A. Yes, sir.

Q. How frequently?

A. Every evening, and in the day-time sometimes.

Q. Do you know anything about his using liquor?

A. I never knew him to use much liquor; he used wine and beer.

Q. How frequently?

A. I think he drank wine and beer every day.

Q. Was he there evenings?

186 A. Yes, sir; whenever I was.

Q. How late?

A. From nine o'clock.

Q. Up to what time?

A. About twelve.

Q. Was he drinking occasionally during the evening?
A. Yes, sir; he took his glass of wine or beer.
Q. Do you know how many?
A. I never kept track of them?
Q. Have you no idea?
A. Three or four, I suppose, in the evening.
Q. Was that a regular thing with him?
A. It was regular whenever he was down town.
Q. Was he down town most every night?
A. I don't know; I was not there every night.
Q. How many nights were you there?
A. One or two in the week.
Q. During the nights you were there, how often did you see him there?
A. I suppose every night.
Q. And his custom was to remain from nine to twelve?
A. Yes, sir.
Q. What was he engaged in while there?
A. Reading and talking with friends.
Q. And drinking his three, four, or whatever it was, glasses of beer and wine?
A. Yes, sir.
Q. Did he ever stay later than twelve?
A. Not to my recollection; he was not there later.
Q. How often during that time did you see him under the influence of liquor?
187 A. Not very often. I never saw him so much under the influence of liquor that he was not able to take care of himself.
Q. Have you seen him under the influence of liquor so that it was apparent that he had been drinking freely?
A. I have seen him so that a person could tell that he drank.
Q. How many times?
A. I do not know how often.
Q. Was that or not a usual thing?
A. It was a usual thing.
Q. How frequently; can you say?
A. I could not form any opinion.
Q. You say you were there for four years?
A. Yes, sir.
Q. For two nights in the week?
A. Yes, sir.
Q. And you say he was there every night that you would be there?
A. Yes, sir.

Cross-examination by Mr. BLACK:

Q. Where is this saloon?
A. At present down-stairs here.
Q. Where was it at that time?
A. 812 Main street.
Q. You knew Pitkin during this length of time?
A. About four years.
Q. You had been in that saloon all the time?

A. Yes, sir.
Q. Two nights in the week?
A. Yes, sir.
188 Q. You say he did not drink whiskey?
A. Very seldom.
Q. Did you have any regular night of the week to be there?
A. No, sir. Generally I was there on Sunday every other week.
Q. What he drank was beer and wine?
A. Yes, sir.
Q. You very seldom saw him drink any whiskey?
A. Yes, sir.
Q. You say he would go there and talk with his friends?
A. Yes, sir.
Q. What sort of friends did he meet there?
A. I do not remember one-half of them. When I was there he would talk with me, and anybody else that happened to be there.
Q. During all this time you seldom saw him under the influence of liquor, and at all times he was able to take care of himself?
A. Yes, sir.

Witness T. W. Butler.

T. W. BUTLER, a witness on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. CHANDLER:

Q. How long have you lived at Kansas City?
A. Nine years.
Q. Did you know George E. Pitkin in his life-time?
A. Yes, sir.
Q. How long did you know him before he died?
A. Well, a very short time before.
Q. How many years?
189 A. Not many weeks.
Q. How many?
A. Not more than a week.
Q. Where did you get acquainted with him?
A. In the society that we were members of.
Q. Do you know anything of his habits of temperance?
A. Well, I have seen him drink frequently.
Q. Where?
A. Well, I have not seen him for the last four or five years much; but I used to before that when I was a single man. After our meetings I had no particular place to go except to my room, and we used to go out together.
Q. That is how long ago?
A. About five years.
Q. Where did you go?
A. To the beer saloons.
Q. You used to go there after the lodge?
A. Yes, sir.
Q. How long did you generally stay there?
A. Sometimes an hour; sometimes longer.

Q. What was he doing when there?
A. He usually played a game of cards.
Q. Drink anything?
A. Yes; a glass of beer or wine.
Q. How frequently of an evening would he drink beer or wine?
A. Well, I don't know. I annot recollect the exact number of times; three or four.
Q. Did he usually stay pretty late?
A. Well, rather late.
Q. Up to what hour generally?
190 A. We sometimes got away from our meetings about nine or ten, and we would stay there an hour or two; sometimes as late as 12 o'clock.
Q. Did you go away first or he?
A. Sometimes we would go together; sometimes he would go first, and sometimes I would go and leave him with a party; sometimes there would be half a dozen of us.
Q. Sometimes he would get under the influence of liquor, would he?
A. Well, I never saw him under the influence of liquor so that he could not take of himself.
Q. Have you seen him at times when you would know from his appearance that he had been drinking?
A. No, sir; I never did.
Q. How long did this practice that you speak of, of being there from nine to eleven or twelve, how long did that continue?
A. Well, I presume as near as I can recollect about a year.
Q. Do you know whether he kept that up a number of years?
A. No, sir.

Cross-examination by Mr. BLACK:

Q. What year was it that you became acquainted with him?
A. I think it was 1871.
Q. Now you met him at your lodges?
A. Yes, sir.
Q. And after the lodge adjourned you would go to the saloon, sit down, and take a drink?
A. Yes, sir.
191 Q. What do you mean by a party?
A. Well, sometimes there would be five or six of us.
Q. Members of the lodge?
A. Yes, sir,
Q. They all went in and drank, too?
A. Yes, sir.
Q. You didn't all get drunk, did you?
A. No, sir.
Q. Then you would go in and take a glass of beer or two, and talk?
A. Yes, sir.
Q. And then go home?
A. Yes, sir.
Q. Did you go with him?

A. He lived in an opposite direction from me, and we parted at the corner here in going home.

Q. Now, I understand that while you had that custom, and would go into the saloon and take a glass of beer you never saw him drunk?

A. No, sir.

Q. He was secretary of your lodge, I believe?

A. Of one he was secretary, of the other he was district deputy grand master; he had different positions.

Q. What was he in your order?

A. In the Odd Fellows he was district deputy grand master and in the Masonic Lodge he was secretary.

Q. He was an officer of both?

A. Yes, sir; he always held some office. He was a very energetic man in the societies.

192 Q. What other parties went in with you and Pitkin and took a drink?

A. Mr. Harburg and Mr. Morgan, and sometimes Mr. Schwartz, bookkeeper for Keevil & Waples.

Q. You all drank together while there?

A. Yes, sir.

Q. Drank beer and wine?

A. Yes, sir.

Q. Anything else?

A. I never saw him drink anything but beer or wine.

Q. And you and the other man drank the same?

A. Yes, sir.

Re-examination by Mr. CHANDLER:

Q. You do not know where he went after you parted?

A. No, sir.

Q. You do not know whether he went home or not?

A. No, sir.

Mr. CHANDLER. I now offer to read in evidence this paper, the one written by Mr. Pitkin, and given to Mr. Doppler as his authority to install the officers of the lodge.

Mr. PRATT. We have no objection.

The paper was then read in evidence as follows:

Note of Pitkin to Doppler.

"KANSAS CITY, *Sept. 29th*, 1878.

"I hereby appoint Brother Philip Doppler, D. D. G. M., to act for me to install Lincoln Lodge, No. 123, for the year 1878.

"GEORGE E. PITKIN,
"*D. D. G. M., Dist.* 20."

Mr. CHANDLER. I now offer the applications so far as one interrogatory is concerned.

(Objection to introduction of application.)

Mr. PRATT. We object. As to the application for the $5,000 policy, that is evidently not signed by the plaintiff, but by George E. Pitkin.

193 With that admission we have no objection to its going in; otherwise we desire to put them on the proof as to the signature. The second one we object to for the reason that the second policy bears date September 24, 1873, and the answer set out on application of even date with the policy. This application which they now present bears date June 2, 1869, and is an application for a policy of $2,000 upon his life, payable at death. It is claimed to be introduced as the application on which this policy of $423, bearing date September 24th, 1873, and payable at death or at the end of eight years, was issued.

Ruling on adm. of application.

The COURT. In order to admit it there must be something connecting the application with this policy. That is usually done by the dates or amounts. Without some explanation it cannot be admitted. The first application may be admitted.

Except. of def't.

To this ruling of the court defendant's counsel then and there duly excepted.

Question and ans. read.

Mr. CHANDLER. I will read one question and answer: "Is the party now, and has he always been, of temperate habits?

A. "Yes, sir."

Witness R. T. Van Horn.

R. T. VAN HORN, a witness called on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. CHANDLER:

Q. Col. Van Horn, how hong have you resided in Kansas City?

A. About 24 years?

194 Q. Did you know George E. Pitkin in his life-time?

A. I knew him most of the time, probably 21 or 22 years.

Q. When did you first form his acquaintance?

A. When he came here and went into business as a clerk in the establishment of his brother.

Q. Do you recollect about what year that was?

A. It is over 20 years ago.

Q. About 1858 or '59?

A. Yes, sir.

Q. How intimately did you know him?

A. I knew him as I knew most of my neighbors that I was intimately associated with.

Q. Pretty well?

A. Yes, sir; the town was not very large then, and most everybody knew everybody else.

Q. Do you know anything about his habit of using liquor?

A. I never took much notice of his habits.

Q. Did you take any notice?

A. I don't know that I have, critically.

Q. Well, generally?

A. I never had occasion to notice his conduct any more than others of my neighbors.

Q. Did you notice it enough to know whether he drank liquors or not?

A. I believe he did. Most everybody did in those days.

Q. It was rather a custom of the country at that time?

195 A. Yes, sir; a man who did not drink would be more remarked than one who did.

Q. And Mr. Pitkin did not distinguish himself from the rest by refusing to drink?

A. Not enough to call my attention to it.

Q. To what extent did he drink at that time?

A. I could not tell that at all, sir.

Q. Well, do you know what sort of a temperament the man had—whether liquor affected him much or not?

A. I always thought a little liquor went a great ways with him—more than with other men not of the same temperament.

Q. What was his temperament?

A. Rather excitable and nervous, I thought.

Q. State whether in your acquaintance with him you noticed the effect of liquor upon him; to what extent he was affected, and how differently from other people; whether one-half or one-fourth the amount of liquor would affect him.

A. I can't tell that.

Q. Did it have a manifest influence over him to a greater degree than upon other people generally?

A. That was my impression. George could not stand very much along with the people of those days.

Q. Did you ever see him under the influence of liquor, colonel?

A. Well, I don't believe I could designate*d* any time that I ever did. I have been trying to think the matter over since I knew I had

196 to come here, but I cannot fix any definite time or circumstance.

Q. What is your recollection about his general practice as to drinking; was it frequent or general, as was the custom?

A. I say everybody, more or less, took a social glass in those days; it was more common than it is now, and a man who did not drink in those days was more singular than a man who did.

Q. Do I understand you to say that Mr. Pitkin came up to the full measure of the custom?

A. No; I do not think he did.

Q. Did he fall behind a little?

A. I can give you my impression.

Q. I just want to know what you know, colonel; I do not want to prolong your examination.

A. I cannot recall any specific occasion when I saw him what you would call drunk; I do not know that I ever did. Since the war I have seen very little of him at all. Since 1861 I have seen him very seldom; before that I saw him often.

Cross-examination waived.

Witness E. W. Schauffler.

E. W. SCHAUFFLER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. CHANDLER:

Q. Doctor, how long have you resided in Kansas City?

A. Eleven years.

Q. What is your business or profession?

197 A. Physician.

Q. How long have you been practicing?

A. 15 years.

Q. Are you now in practice?

A. Yes, sir.

Q. Did you know George E. Pitkin in his life-time?

A. I did, sir.

Q. When did you become acquainted with him?

A. About 1874 or 1873.

Q. Do you know anything of his habit of using liquor?

A. Well, I know in a general way that he was an ordinary drinker; a man that drank liquor.

Q. Well, have you ever seen him under the influence of it?

A. Yes, sir; I think I have.

Q. How many times and on what occasions?

A. I could not say how many times. I have met him late at night or late in the even'g when it was my impression that he was under the influence of liquor.

Q. How late at night?

A. Ten, eleven, or twelve o'clock.

Q. To what extent was he under the influence of liquor, in your judgment?

A. Well, he was mellow.

Q. How many different times did you see him in that condition?

A. Certainly a half dozen times.

Q. During what years?

A. Well, this was more particularly within the last couple of years of his life.

198 Q. Did this or not occur at night in all these cases?

A. Yes, sir; I never saw him but seldom except at night, unless it was in the office of the company.

Q. Did you, from what you saw of his habits and appearance, form any opinion as to whether his health was affected by it?

A. Well, he did not look to me to be in bad health at all, sir.

Q. Well, do you know what effect the constant or frequent use of liquor has upon the system?

A. Yes, sir; I think it has an injurious effect.

Q. Well, state to the jury whether in your opinion the condition you saw him in, under the influence of liqur to the extent you know him to have been, whether his health would have been affected by it—a practice of that kind extending through a year or so.

A. Yes, sir; I consider that any man who drinks to the extent of being

manifestly under the influence of liquor, and makes a practice of it for any length of time, will injure his health.

Q. Well, did you form that opinion concerning Mr. Pitkin?

A. I did.

Q. Are you of that opinion still?

A. Yes, sir.

Cross-examination by Mr. BLACK:

Q. Did you see Mr. Pitkin take any drinks?

A. Yes, sir.

Q. Do you drink any?

A. Very little.

199 Q. Sometimes?

A. Occasionally.

Q. Do you think it injurious to your health?

A. No, sir.

Q. How often do you take a drink of whiskey?

A. I do not take a drink of whiskey once a year.

Q. What do you drink?

A. Well, the fact is, I don't drink anything.

Q. I thought you did sometimes?

A. I don't have any regular drink.

Q. What did George drink, whiskey or beer?

A. I do not know.

Q. Did you ever see him take a drink?

A. I don't know that I have.

Q. Did you ever see him in a saloon?

A. Yes, sir; I have seen him coming out of saloons.

Q. Did you see him drink then?

A. No, sir.

Q. You have seen lots of other people coming out of saloons, and healthy men too?

A. Yes, sir.

Q. Some of the most healthy men we have got do it?

A. Yes, sir.

Q. Then you never saw him take a drink in your life?

A. No, sir; I don't know that I did.

Q. You say you have met him at ten or eleven o'clock at night?

A. Yes, sir.

Q. You would be out that late?

A. Yes, sir.

Q. There wasn't anything unusual in that?

200 A. In my meeting him?

Q. Yes, may met a great many other people?

A. Yes, sir.

Q. Are you the examining physician of this insurance company?

A. Yes, sir; quite a number.

Q. Are you for this company?

A. Yes, sir.

Q. The Connecticut Mutual?

A. Yes, sir.

Q. How long have you been?

A. Five or six years, possibly.

Re-examination by Mr. CHANDLER:

Q. Did Mr. Pitkin live near you?

A. The last two years of his life he lived in that neighborhood.

Q. Did you ever have occasion to go home with him when he was under the influence of liquor?

(Objected to as not growing out of the cross-examination; objection overruled.)

A. Yes, sir; I have walked up with him when he was under the influence of liquor.

Q. State whether you formed your opinion from the fact that you were with him under these circumstances; whether you went home with him on account of that.

A. I formed my opinion about his being under the influence of liquor by meeting him on the street and hearing him talk when I did not go home with him; but on on occasion, particularly, I did walk up the hill with him.

201 Q. Did he act and talk like a man under the influence of liquor?

A. Yes, sir; he did.

Q. State whether while going home he expressed any desire to go in and get more drinks anywhere.

A. Yes, sir.

Recross-examination by Mr. BLACK:

Q. When was it that you walked home with him; how long ago?

A. I cannot give the date; it was about the time, or a little before the time, he was said to have been robbed.

Q. You were the examining physician of this company?

A. Yes, sir.

Q. You knew he had a policy here?

A. I did not.

Q. You never gave notice to anybody of that?

A. No, sir; I did not know anything about it.

Q. You walked home with him?

A. Yes.

Q. He was able to walk?

A. Yes, sir.

Q. He talked sensibly?

A. Yes, sir; but he talked more than he would if he had been sober. He wanted to stop at the corners of the streets.

Q. Were you very intimate with him?

A. No, sir.

Q. Can you tell how he talked when you didn't think he was drunk?

A. Yes, sir.

Q. You walked all the way home with him?

A. As far as our corner.

Q. You let him go there?

A. Yes.

Q. You did not think he was in a dangerous condition?

202 A. No, sir.

Q. When did you first learn that Pitkin had a policy in this company?

(Objected to by defendant's counsel as incompetent and immaterial; objection overruled.

To this ruling of the court defendant's counsel then and there duly excepted.)

A. I did not know it until I heard of the claim being contested.

Witness W. A. Whiting.

W. A. WHITING, a witness called on the part of defendant, being duly sworn, testified as follows:

Direct examination by Mr. CHANDLER:

Q. How long have you resided in Kansas City?

A. 15 years.

Q. Did you know Mr. Pitkin in his life-time?

A. Yes, sir.

Q. How long did you know him?

A. About 12 years.

Q. What was the nature of your acquaintance with him; intimate or otherwise?

A. It was always very pleasant, and rather intimate.

Q. Do you know anything about his habits of life with regard to using liquor?

A. Yes, sir; somewhat.

Q. Do you know whether he ever used liquor—drank it?

A. I never knew him to use liquor, that is, spirit liquor, whiskey; I have known him to drink beer. Well, I did know him to be under the influence of whiskey once.

203 Q. When was that?

A. That was, I think, about the spring of 1873.

Q. Describe to the jury what occurred.

A. H. P. White came to me and informed me that George was drinking. I was very much astonished.

Q. You need not state that, unless these gentlemen want it. Mr. Black seems to take great satisfaction in it. You may state again that you were astonished.

A. I was astonished.

Q. Very well; now go on.

A. Mr. White informed me that he was drinking, and we got a hack and took him home.

Q. Where did you find him?

A. To the best of my recollection, he was at the Marble Hall.

Q. Was that a drinking place?

A. Yes, sir.

Q. Why did you get a hack?

A. From the simple fact that he was drunk.

Q. Did you get it for his use?

A. Yes, sir; to take him home.

Q. Was that done because he was drunk, or under the influence of liquor?

A. It was.
Q. Who went with you?
A. No one.
Q. You took him to his home?
A. I did.
Q. Was it day or night?
A. In the daytime.
Q. What time?
204 A. I think it was about noon; maybe a little before or after.
Q. Did you ever see him down town of nights?
A. Very frequently.
Q. Do you know whether it was his habit to go down to the saloons at night?
A. I think it was.
Q. Were you ever with him?
A. I was, twice a week.
Q. Did you go home with him?
A. Sometimes we would go part of the way home together.
Q. How far?
A. From the post-office down to Missouri avenue; there we separated; he went west and I went east.
Q. Whether he went on home you do not know personally?
A. No, sir.
Q. As to the other evenings when you were not down town you know nothing of his habits?
A. Nothing whatever.

Cross-examination by Mr. BLACK:

Q. You were pretty intimate with him during this time?
A. Yes, sir.
Q. You spoke of meeting him twice a week; would that be of an evening or in the daytime.
A. Evenings.
Q. About how long would you be together?
A. Well, from half past seven until ten or eleven.
Q. You were with him on an average as much as twice a week?
A. Yes, sir.
Q. You were on pretty friendly terms?
A. Very friendly.
205 Q. And this is the only time you know of his being under the influence of liquor?
A. Yes, sir.
Q. Judge White called your attention to it at the time?
A. Yes, sir; he called me and asked me what we had better do, and I suggested that we get a hack and take him home.
Q. Did you know E. W. Pierce?
A. Yes, sir.
Q. You and Mr. Pitkin were members of the same lodge; that was the way you happened to be together?
A. Yes, sir.
Q. Was Mr. Pierce also a member?
A. Yes, sir.

Q. Did he meet with you continually?

(Objected to.)

Q. You may state whether E. W. Pierce was a member of the same lodge and met with you from time to time.

(Objected to by defendant's counsel as immaterial.

Objection overruled.

To this ruling of the court defendant's counsel then and there duly excepted.)

A. He did.

Q. Is Mr. Pierce living or dead?

A. He is dead.

Q. When did he die?

A. I cannot tell exactly. Is it 7 or 8 years? You know better than I do.

Q. Well, just state your recollection.

A. I think it must be that long.

Mr. Chandler. For the purpose of getting the benefit of this
206 ruling I offer this application, the one your honor ruled out, as the one upon which this policy is founded. I understand that it is excluded.

The Court. Yes, without proof of its connection with the policy.

To this ruling of the court defendant's counsel then and there duly excepted.

Defendant rests.

And this was all the evidence that was offered.

Whereupon defendant prayed the court to charge the jury as follows, to wit:

Def't's inst. No. 1.

Pitkin
vs.
Conn. Mu. Life Ins. Co.

The court instructs the jury that though they believe from the evidence in this case that deceased, Pitkin, took his own life while under the influence of an insane impulse, or while his reasoning faculties were so impa'red as that he was not able to understand the moral character or effect of the act of shooting himself, yet if such condition of Pitkin's mind resulted from the habitual use of intoxicating liquors by said Pitkin after the execution of said policy, then the policy sued on becomes and is void, and plaintiff cannot recover. (Mut. Ben. Life Ins. Co. vs. Halterhoff, 2 Cinn. (Ohio), 379.)

207 *Def't's inst. No. 2.*

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The jury are instructed that if they believe from the evidence in this case that the conversations and acts & conduct of the deceased Pitkin, relied upon by plaintiff to establish the insanity of the said Pitkin at the

time when he shot himself, are as ascribable and imputable to the effects of liquor drank by him at any time prior to the said killing of himself (if he did so use and drink liquor) as to a diseased mind from other causes, then the insanity of said Pitkin is not proved in this case, and the finding should be for defendant. (Weed vs. Mu. Ben. Life Ins. Co., 70 N. Y., 561.)

Def't's inst. No. 3.

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If the jury believe from the evidence in this case that deceased Pitkin used and drank intoxicating liquors to excess and to a degree that impaired his health after the policies herein sued on were issued, then the jury should render a verdict for defendant, notwithstanding they may also believe that said Pitkin killed himself while insane. (Shader vs. Railway, Pass. Ins. Co., 66 N. Y., 441.)

Def't's inst. No. 4.

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208 If the jury believe from the evidence that the deceased Pitkin used and drank intoxicating liquors habitually, and that such use of liquor contributed directly to his condition of mind when he killed himself, and that such use of liquor co-operated with other causes to bring about his self-destruction, and was an active influence upon said Pitkin when he killed himself, impelling him to the act, then no recovery could be had in this case, and your finding will be for defendant. (8 Chicago Legal News, 227.)

Def't's inst. No. 5.

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The court instructs the jury that if the assured, being in possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally took his own life the proviso of the policy attaches, and there can be no recovery. (15 Wall., 580.)

The burden of proof is on the plaintiff in this case to establish the issue of insanity of George E. Pitkin, as alleged by plaintiff in her replication at the time of his killing himself; and the fact of his having taken his own life is no evidence whatever that he was at that time of so doing of unsound mind, and such insanity must be established by facts and conduct of the said Pitkin not the result of the use of liquor by the
209 said Pitkin. It is the duty of plaintiff, before a recovery can be had in this action, to show by testimony that the deceased,

George E. Pitkin, kept and performed the condition of the policy that he would not use intoxicating liquors so as to impair his health. (2 Dillon, 160–166.)

If George E. Pitkin killed himself in pursuance of a purpose to do so, formed and entertained by him some hours or more previous to taking his own life, and had at the time of killing himself sufficient of intelligence and vigor of mind to know that he was taking his own life, and that he did so as a choice, then and there made by him, of death rather than to live and suffer the mortification, disappointments, and adversities then and there besetting him, if any, then the said George E. Pitkin sufficiently appreciated the moral quality and natural consequences of his act of self-destruction to defeat a recovery in this action. If George E. Pitkin frequently became intoxicated before the date of either of the policies sued on, then the warrant in the application for said policy that said Pitkin was, and always had been, of temperate habits was and is broken, so far as the policy is concerned, to which such a state of things applies, and said policy is void. (27 Wall., 37; 53 Miss., 1, 91 U. S., 51.)

210 (NOTE BY THE CLERK.—The foregoing instructions constitute all the instructions asked by defendant. Those given and those refused are not distinguished by any mark, note, or memorandum that enables the clerk to separate them and copy only those refused, as required by the bill of exceptions; the instructions not being written out in full in the bill of exceptions, but only referred to, with an injunction to the clerk to insert them in their proper order.)

But the court refused to give said charge or instructions, or either of them; to which ruling of the court, in refusing to charge the jury as requested, as set forth in each of the said instructions, defendant at the time excepted.

The court, on its own motion, gave the following charge to the jury:

211 *Charge to the jury.*

GENTLEMEN: Before I read to you the instructions which I have prepared I want to recall to your memory the issues in this case, so as to enable you to receive the instructions as they are intended to be given you.

This suit is brought by Mrs. Pitkin upon two life insurance policies by which the life of her husband was insured. After he died she made proof of loss, and demanded of the company the amount of the policies. The company refused to pay, for these reasons:

I speak now of the $5,000 policy first, because first obtained: When he made application for the policy there was this question asked. "Is the applicant now and has he been at all times temperate?" And the response was, "Yes." There is also these other conditions in the policy, that the insured shall not become intemperate in his habits so as to injure his health or induce delirium tremens, nor shall he take his life himself. All these things are conditions of the policy, a breach of which would avoid it.

Now, the allegations made in the answer that he made false answer to the interrogatory which I have repeated to you and the allegations that by a course of intemperance he injured his health are allegations made by

the company, and the company must prove them to your satisfaction; they are defences which they set up and they must prove.

Regarding the death of the insured, the plaintiff admits the killing, or that the insured killed himself, but says he did it while he was insane;
212 that this was not in contemplation at the time he entered into the insurance, and, therefore, the policy is not avoided for that reason. But this issue is upon the plaintiff. The plaintiff alleges this, and is bound to prove it to your satisfaction. These are the issues upon which you are to pass; and I will now read you, in a connected form, the instructions of the court upon these issues.

Helen Pitkin, plaintiff, brings this action against the Connecticut Mutual Life Insurance Company to recover the amount of two policies of insurance on the life of her husband, George E. Pitkin, one for $5,000, dated August 1, 1866; the other for $423, dated September 24, 1873. The insurance company refuses to pay because it says:

First. That the policy provides that in case the insured shall, after the execution of the policy, become so far intemperate as to injure his health or induce delirium tremens, or in case he shall die by his own hand, the policy shall be void, and the defendant alleges that the insured became so far intemperate as to impair his health, and that the insured became so intemperate as to induce delerium tremens; and, further, that the insured, on the 29th of September, 1878, with premeditation and delibertion killed himself.

Second. That the insured made false and untrue answer in his application for insurance to the question, "Is the party now and has he always been of temperate habits?"

To the defence that the insured committed suicide the plaintiff
213 replies, admitting the death of the insured by his own hands, but alleges that at the time he killed himself he was insane. You have, then, to pass upon the following issues: Did the insured at the time he made application for the $5,000 policy make false and untrue answer to the question if he was then and always had been of temperate habits? Did the insured, after the execution of the policy, become so far intemperate as to impair his health or induce delerium tremens? Was the insured, at the time he took his life, insane?

The insurance company set up that the insured made a false answer, and representation that he then was and always had been of temperate habits, and they allege that the assured became so far intemperate as to impair his health and induce delirium tremens. This allegation the insurance company is bound to prove to your satisfaction, in order to defend themselves successfully against the payment of the policy. Regarding the first representation, that the insured made untrue answer—when you come to read the answer, the point that the insured made false answer is the third and last one; but I have reversed it and put it in the order in which it would naturally come. Regarding the point that the insured made untrue answer in the application that he was and always had been of temperate habits, I call your attention to the statute of Missouri, which provides that no misrepresentations made in obtaining or securing a policy of insurance on the life or lives of any person or persons shall be
214 deemed material, or render the policy void, unless the matter misrepresented shall have actually contributed to the contingency or

event on which the policy is to become due and payable; and whether it did or not so contribute in any case shall be a question for you—for the jury. Misrepresentations are under this law deemed material and avoid the policy when, in this case, their subject-matter shall have actually contributed to the death of the insured. You are therefore instructed that though you may find that the insured made false and untrue answer to the question whether he was then and always had been of temperate habits, yet if his habits, as found by you from the evidence, did not contribute to his death it makes no difference whether he answered truely or falsely. But if the insured answered falsely, and his intemperate habits contributed to or induced his death, the policy is void, and you should find for the defendant.

As to the issue whether the insured, after the issue of the policy, became so far intemperate as to impair his health and induce delerium tremens, you are instructed as follows: The meaning of this condition is not that the insured shall use no intoxicating beverage, or shall not use them occasionally or moderately, but that he shall not use them so immoderately or excessively as to impair his health, or to the extent or in the manner that his death is caused or hastened thereby. An occasional intoxication which leaves no permanent effect upon the health of the insured
215 is not within the condition of the policy. On the other hand the degree or habit of intemperance contemplated is that which impairs the health so as to cause, induce, or hasten the death.

It is admitted by the plaintiff that the insured came to his death by his own hand. This entitles the defendant to a verdict unless the plaintiff has shown to your satisfaction that the deceased was insane so as to be incapable of committing the act in the sense in which these words are used in the policy, that is to such an extent as to relieve the act of the character of self-destruction. On this point the plaintiff, as I have already said, has the burden of proof upon her. If you find from the testimony that intemperance produced a mental condition which caused self-destruction the policy is void, and plaintiff cannot recover thereon.

Upon the question of insanity you are instructed, in the language of the Supreme Court of the United States, as follows: It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable; to do this, the act of self-destruction must have been the consequence of insanity, and the mind of the deceased must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing. If he was impelled to the act by an insane impulse, which the reason
216 that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act which he was about to do, the company is liable. On the other hand, there is no presumption of law, prima facie or otherwise, that self-destruction arises from insanity." And you will remember that when you were examined as to your qualifications as jurors you were asked the question if any of you in your opinion held that the act of suicide on the part of any one implied insanity, or that persons who committed suicide were necessarily insane, and you answered, "No." And had you answered otherwise you would have been excluded from the jury. I call that to your mind so as to bring the matter before you. "If

you believe from the evidence that the deceased, although excited or angry or disturbed in mind, formed a determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the company is not liable, because he died by his own act within the meaning of the policy."

"If the insured, being in possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life the proviso attaches and there can be no recovery; that is he did die by his own act. If the death is caused by
217 the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, and when his reasoning faculties are so impaired that he shall not be able to understand the moral character or general nature, consequence, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not reasoning power to resist, such death is not in the contemplation of the parties to the contract, and the insurance company is liable."

If you find for the plaintiff, you will find for the amount of the policies, together with six per cent. interest from ninety days after the proof of loss.

If you find for the defendant, you will say so in your verdict.

I call your attention to a distinction between the two policies. The $5,000 policy has an application connected with it in which the alleged untrue answer is made. The $423 policy has no application, and that question does not affect that policy.

Mr. PRATT. (One of the attorneys for plaintiff.) I desire to ask your honor if you have in mind the fact that this statute of Missouri, to which your honor has referred, was passed subsequent to the issuance of the policies sued on.

The court then said to the jury: Gentlemen: When I called your attention to the statute of this State with reference to misrepresentations made on application for life insurance I did not have in mind the date
218 of that act. Now, that my attention is called to the fact, and very properly too, that this act of the State of Missouri was passed after the issuing of the policy, it is proper that that portion of the charge should be removed from your minds, and you are instructed that it has no application in this case.

The cause being submitted to the jury upon the foregoing evidence and charge the jury returned into court the following verdict, to wit:

We, the jury, find the issues for the plaintiff and assess the damages.

Policy	5,000 00	
Interest	244 16	
		5,244 16
Policy	423	
Interest	20 61	
		443 61
Whole amount		$5,687 77

JNO. SHILLER, *Foreman.*

Whereupon defendants, within the four days required by law, filed the following motions in arrest of judgment and for a new trial, which said motions are in words and figures respectively, to wit:

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Now at this time comes the defendant and moves the court to set aside the verdict and grant a new trial for the following reasons, to wit:

1. Because the verdict is against the evidence and weight of evidence.

219 Because the issue of insanity raised in the pleadings is not established by the testimony, and there is no testimony thereof.

Because the court erred in charging the jury and in failing to give instructions asked by defendant to be given.

Because the court erred in admitting incompetent testimony for plaintiff against objection of defendant and excluded competent testimony offered by defendant.

Because court erred in refusing to sustain defendant's motion to dismiss, and because the court has no jurisdiction of the defendant or of this action.

LEE AND CHANDLER & CHASE AND BROWN,
Att'ys for Def'ts.

Which motions being severally considered by the court were each overruled; to which ruling of the court, in overruling said motions, and each of them, defendant at the time excepted.

Whereupon defendants presented this its bill of exceptions and asked that it be signed, sealed, and made a part of this record, which was done, and defendant then and there filed its motion and affidavit for an appeal, which was adjudged sufficient, and filed its appeal bond, which was approved by the court, and an appeal to the Supreme Court of the United States was allowed and granted by said circuit court.

A. KREKEL, *Judge*. [SEAL.]

220 UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, set:

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said division and district, do hereby certify that the foregoing writing is a full, true, and complete transcript of the record and proceedings in the case of Helen Pitkin, plaintiff, ag'st the Connecticut Mutual Life Insurance Co., lately depending in said court, as fully as the same remains of record and on file in my office.

Witness my hand as clerk and the seal of said court. Done at office, in the City of Kansas, this 28th day of August, A. D. 1880.

H. C. GEISBERG, *Clerk*,
By WARREN WATSON,
Deputy Clerk.

(Indorsed:) Case No. . U. S. circuit court, western district of Missouri (western division). vs. . Duly certified copy of in the above entitled cause.

(Indorsement on cover:) No. 311. The Connecticut Mutual Life Insurance Company, plaintiff in error, vs. Helen Pitkin. W. Missouri C. C. U. S. Filed 7th October, 1880.

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